

CLAYTON COUNTY

CENTRAL SERVICES



**QUICK GUIDE TO PURCHASING
&
CONTRACTING**

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1. **FORWARD**

The Procurement Department has prepared this Quick Guide to Purchasing & Contracting Procurement Procedures Manual to serve as the basis for procurement policies and procedures for Clayton County. This manual is authorized by the Procurement Ordinance. It is also based on the American Bar Association's Model Procurement Code.

The procurement function involves the acquisition of materials, supplies, equipment, and services at the lowest possible cost, consistent with the quality needed to meet the required standards established and approved by the Board of County Commissioners. Our goal is the promotion of the best interest of Clayton County through intelligent action and fair dealings. This will result in obtaining maximum savings for the County.

Since rules and regulations are necessary for the proper operation of the procurement function and since it is essential that all who are involved in the procurement be well-informed, this manual has been developed to aid all employees directly or indirectly associated with the procurement function.

The objectives of Central Services Department of Clayton County are as follows:

1. To deal fairly and equitably with all vendors seeking to do business with Clayton County.
2. Provide professional procurement services for all departments and divisions within the County.
3. Assure adherence to all laws, regulations, and procedures related to County procurement.
4. Maximize competition for all procurements of the County.
5. Obtain maximum savings through innovative buying and application of value analysis techniques.
6. Administer the contracting function with internal efficiency.
7. Procure goods and services from capable vendors at the lowest price, consistent with the quality, performance and delivery requirements of the County.

No contract or purchase shall be subdivided to circumvent the requirements of this Guide.

2. **CENTRAL SERVICES DEPARTMENT RESPONSIBILITIES AND FUNCTIONS**

Sec. 2-102. - Centralized Purchasing.

The Clayton County Board of Commissioners is authorized to require centralized purchasing for all departments and agencies of county government, so as to effect the utmost economy, consistent with efficiency and quality. The Clayton County Board of Commissioners is responsible for prescribing the procedure for requisitioning, requiring inventories of property, materials, supplies and equipment and adopting the necessary rules and requirements that will provide for the orderly purchasing of county materials, supplies and equipment. (Ga. Laws 1955, p. 2064, § 12A; Ga. Laws 1963, p. 2148, § 2)

Sec. 2-107. - Authority and Responsibility of the Department of Central Services.

The Department of Central Services shall serve all of Clayton County Government and have the authority to solicit for the procurement of required commodities, equipment and services in accordance with Georgia law and this Purchasing Code. No official or employee of the County shall make any purchase for or on behalf of the County of any commodities, equipment or services of any kind whatsoever except through the Department of Central Services.

Specific responsibilities and functions include:

1. Developing purchasing objectives, policies, programs and procedures for the acquisition of materials, equipment, supplies and services, subject to Board approval.
2. Coordinating purchasing procedures with County Departments.
3. Serving as the County representative on all matters pertaining to purchasing.
4. Consolidating purchases of like or common items to obtain maximum economic benefits.
5. Establishing standardization of procuring materials, supplies, and equipment, where practical.
6. Promoting good will between the County and its vendors.
7. Preparing and submitting annual operating budgets for the Central Services Department.
8. Conducting pre-bid conferences for formal bids.
9. Maintaining a list of all vendors interested in submitting quotes/bids on County purchases.

Department of Central Services.

Responsibilities. The Director of the Department of Central Services shall, except as otherwise specified herein, be responsible for the administration of all transactions governed by the provisions of this Purchasing Code and shall serve as the principal procurement officer of the County. Unless otherwise provided, any duties and powers of the Director may be delegated by him/her to subordinate purchasing staff members and other employees.

The Director shall monitor compliance with this Purchasing Code and shall implement procedures to review procurements; establish and maintain programs for specification development, contract administration, and inspection, testing and acceptance, in cooperation with the user departments; maintain a record of all purchases made via the competitive and non-competitive purchase process; and enforce the ethical purchasing policy of the County.

The Director shall endeavor to keep informed of current developments in the field of procurement, prices, market conditions and new products; and secure for Clayton County Government, the benefits of research conducted in the field of procurement by other governmental jurisdictions, national technical societies, trade associations having national recognition such as the National Institute of Governmental Purchasing, Inc., and by private businesses or organizations.

Procurement Authority.

1. The Director is authorized to establish the methods and procedures to be used in the purchase of commodities, goods and services that cost less than \$74,999.99 or that are expected to generate revenue less than \$74,999.99.
2. Unless otherwise provided in this code, the purchase of commodities, goods and services that cost more than \$74,999.99 or that are expected to generate revenue of more than \$74,999.99 shall be competitively procured.

Signature Authority.

1. Board of Commissioners Authority. Those contracts in excess of \$74,999.99 shall be signed by the Chairman or his/her designee after adoption and approval of the purchase by official action of the Clayton County Board of Commissioners.
2. Chief Operating Officer Authority. The Chief Operating Officer or his/her designee shall have the authority to sign all formal, written contracts up to \$74,999.99.
3. Director of Central Services Authority. The Director of the Central Services Department or his/her designee shall have the authority to sign contracts up to \$50,000.00.

Periodic Reporting to the Board of Commissioners.

The Director of Central Services shall submit to the Board of Commissioners reports on a monthly basis with the following information:

1. All contracts, contract modifications and/or change orders authorized by the Director of Central Services and/or the Chief Operating Officer (or his/her designee) pursuant to the procurement and signature authority permitted in subsections B and C of this division.
 - A. Such reports shall include a copy of the contract;
 - B. Such reports shall be included on Board of Commissioners' meeting agenda and entered on the minutes;
 - C. Such reports may include additional support documentation as deemed appropriate by the Director of Central Services.
 - D. Other reports that are requested by the Board of Commissioners.

3. PURCHASING POLICIES

1. The following policies are hereby established and shall be adhered to:
 - A. All requests for quotes, goods and services must be initiated by the Purchasing Agent. If necessary, authority to request quotes may be delegated.
 - B. The Central Services Department has full authority to question the quality, the quantity, and type of materials requisitioned by any department to serve the best interest of the County.

- C. All bidders must be afforded equal opportunity to submit quotes and shall compete on equal terms.
- D. The County shall only conduct business with vendors who have adequate financial strength, high ethical standards, record of adhering to specifications, maintaining shipping promises, and giving a full measure of service. New sources of supply will be given due consideration as multiple sources of supply are necessary to ensure availability of materials.

4. Code of Ethics

Sec. 2-97. Ethics.

It is the policy of Clayton County to seek the best overall value when procuring goods and services. Toward this end, the County finds and declares that its objectives will best be achieved through an open, competitive process with a broad range of responsible suppliers wishing to furnish products and services to the County. Clayton County will set up and conduct a purchasing program that maximizes service benefit to the community and awards contracts to suppliers who offer the best value.

- A. Clayton County declares that employees and officials, along with those wishing to do business with the County, have the shared responsibility for avoiding biased, anticompetitive or unethical practices.
- B. Clayton County employees, officials, and their Family members are prohibited from seeking, requesting, or receiving any material payment, gift, job offer, security, promise of future benefit, or any other tangible or intangible thing of value when such receipt has the potential to influence a procurement decision or to gain unfair advantage in a procurement competition, and as outlined in the County's Ethics Code found in Article 2, Section 70-61, *et seq.* and all other applicable policies.
- C. Prospective suppliers must compete for County business within the parameters of the solicitation process and are prohibited from seeking to obtain inside information, attempting to skew the writing of specifications or influencing a procurement decision through any means outside the process established for the particular solicitation. This principle applies to any contractor, subcontractor, representative, employee, or agent that may be associated with a procurement transaction.
- D. Ethical business practices are important both during a solicitation and after the decision to grant an award. To this end, the County seeks to establish relationships with suppliers whose ongoing ethical standards of business conduct are congruent with those outlined here. The Director is charged with establishing methods for ongoing monitoring for non-compliance with these principles. The prohibition against the offering of or the acceptance of kickbacks, gratuities, payments or any other thing of value extends beyond and outside any specific procurement or solicitation. Violations by Clayton County employees and officials will be governed by the Clayton County Civil Service Rules and the Clayton County Code of Ethics, Clayton County Code of Ordinances, Art. II § 70-61, *et seq.*
- E. A supplier's contract compliance history with Clayton County and other contractual parties is a valid element in the decision to award a solicitation.
- F. Clayton County stipulates that the furtherance of its strategic goals for job creation, stability and growth in the tax base, business retention, and other fiscal and economic development objectives may be considered during the procurement process. The Director is authorized to establish procurement initiatives consistent with

the County's strategic economic development objectives. These procurement practices shall be applied consistently and equitably, and shall have a direct relationship to the County's goals.

- G. Clayton County employees, officials, and their Family members are prohibited from participation in any procurement decision or any gain of unfair advantage in a procurement competition as a result of contemporaneous employment with a potential or actual business partner. When a conflict of interest is discovered, the employee involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter. If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed pursuant to the Clayton County Civil Service Rules and the supplier or potential supplier may be placed on the Ineligible Source List and/or have their existing contract canceled.
- H. It is unethical for any Clayton County employee or official to purchase goods and/or services from a County contract for personal use, unless the goods and/or services are made available to employees through the contract specifically for that purpose.
- I. Individuals, firms and businesses seeking an award of a Clayton County contract may not initiate or continue any verbal or written communications regarding a solicitation with any County officer, elected official, employee or other County representative other than the Department of Central Services employee named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award by the Board of Commissioners, unless specified otherwise herein. Attempting to influence the outcome of any given contract prior to a recommendation of award to the Board of Commissioners is strictly prohibited. The Director will review alleged violations of this prohibition. If the Director determines that such a communication has compromised the competitive process, the offer submitted by that Person may be disqualified from consideration for award, and that Person may, among other things, be placed on the Ineligible Source List. Violations by Clayton County employees and officials will be governed by the Clayton County Civil Service Rules. Violations may also be subject to prosecution under Federal, State or Local laws.

1. RELATIONSHIP WITH THE SUPPLIER

- A. Maintain and practice, to the highest degree possible, business ethics, professional courtesy, and competence in all transactions.
- B. Association with suppliers at lunches, dinners or business organization meetings is an acceptable professional practice enabling the buyer to establish better business relations provided that the buyer keeps free of obligation.
- C. Purchase without prejudice, striving to obtain the maximum value for each dollar of expenditure.
- D. Preclude from showing favoritism or be influenced by suppliers through the acceptance of gifts, gratuities, loans or favors.
- E. Adhere to and protect the supplier's business and legal rights to confidentiality for trade secrets, and other proprietary information.
- F. Refrain from publicly endorsing products.

5. DEFINITIONS

1. **Absolute Value:** The numerical value of an acquisition or change order request without regard to its sign.
2. **Acquiring Department:** The department, division, board, authority, or other unit of Clayton County government under whose authority, on whose behalf, or for whose use a commodity, service, or real property is requested or acquired or a contract or agreement relating thereto is obtained.
3. **Acquisition:** A transaction in which the County purchases, orders, contracts for, or otherwise agrees to obtain for value any commodity, or service, or combination thereof.
4. **Amendments** or change orders and supporting documentation maintained in the repository.
5. **Best and Final Offer (BAFO):** In a competitive negotiation, the final proposal submitted after negotiations are completed that contains the proposer's most favorable terms for price, series and products to be delivered.
6. **Bid:** Submission of information from a bidder that describes the bidder's commodities or services, and any other information necessary to respond to the specifications and other requirements set forth in an Invitation to Bid.
7. **Bid Bond:** An insurance agreement accompanied by a monetary commitment, by which a surety accepts liability and guarantees that the bidder will not withdraw the bid.
8. **Board of Commissioners ("Board"):** The public body or authority with whom the Contractor or Lessee has entered into the agreement and for whom the work or service is to be provided.
9. **Brand Name or Equal Specification:** A specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet County requirements, and which provides for the submission of equivalent products.
10. **Brand Name Specifications:** A specification limited to one or more items by manufacturers' names or catalogue numbers.
11. **Business:** Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
12. **Change Order:** A written order that alters any term or provision of a two-party contract or purchase order, including but not limited to revisions that change the scope of the work to be furnished, the product to be purchased, the price of the purchase, and/or the length of the term of the contract or purchase order.
13. **Commodity:** Any moveable, tangible article of trade or commerce.
14. **Consultant:** A person who has expertise because of education or experience that qualifies him or her to provide specialized services or advice.
15. **Contract:** Any agreement, purchase order, lease, or other document which creates or is intended to create binding reciprocal obligations including, without limitation, any document evidencing a bid or proposal award which has been accepted by the bidder.
16. **Contractor:** Any person who contracts to provide commodities or services to the County.
17. **Cooperative Purchase:** An arrangement whereby two or more public procurement units purchased from the same supplier using a single Invitation to Bid or Request for Proposal.
18. **Department Director:** The director of the user department requesting the acquisition or disposition.
19. **Director:** The Director of the Department of Central Services.
20. **Emergency Purchase:** A purchase made due to an unexpected an urgent request where health and safety of the conservation of public resource is at risk. Usually formal competitive bidding procedures are waived.
21. **Employee/Official:** An individual drawing a salary or wage from Clayton County,

whether elected or not, any member of a board appointed by the governing authority, or any elected or appointed officer of Clayton County.

- 22. Family:** Family means a person who is related to an official or employee as spouse or as any of the following whether by marriage, blood or adoption: parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law or sister-in-law.
- 23. Formal, Written Contract:** Written agreement between Clayton County and third-party supplier(s) which creates or is intended to create binding reciprocal obligations to purchase products or services and contains the terms and obligations which the parties must adhere to. Formal, written agreements may be signed by more than two parties and require Law Department approval.
- 24. Ineligible Source List:** An approved compilation of individuals, firms, and/or businesses that are not eligible to participate as a bidder/proposer, and that are not eligible to contract with Clayton County for a period of time up to three years.
- 25. Invitation to Bid:** A method of formal solicitation requesting prospective third-party suppliers to submit formal sealed price bids. The award is made to the lowest responsible and responsive bidder, based on the response criteria set forth in the Invitation to Bid.
- 26. Local Vendor:** A business or supplier that operates and maintains a staffed, fixed, physical place of business within Clayton County, and has held a valid business license from Clayton County or a city located within Clayton County for at least one year.
- 27. Notice To Proceed:** A written notice given by the managing department fixing the date on which the agreement times will commence. The Contractor shall begin to perform his/her obligation according to the agreement documents on this date.
- 28. Payment Bond:** A financial or contractual instrument issued by a surety that guarantees that subcontractors will be paid for labor and materials expended on the contract.
- 29. Performance Bond:** An instrument executed subsequently to award, by successful bidder that protects the County from loss due to the Bidder's inability to complete the contract as agreed.
- 30. Person:** Any individual, firm, business or other legal entity.
- 31. Proposal:** Submission of information from a proposer (including a consultant) which states how that proposer intends to fulfill the specifications and other requirements described in a Request for Proposal.
- 32. Proprietary Information:** Any information which is available to an employee only because of the employee's status as an employee of Clayton County and is not a matter of public knowledge or available to the public on request.
- 33. Purchase Order:** A written sales contract between the County and third party supplier(s) authorizing the delivery of goods or services and detailing the exact products or services to be rendered including such information as prices, descriptions, payment terms, quantities, date of performance, shipping and all other conditions and obligations. A purchase order is a contract but does not need Law department approval.
- 34. Request for Proposals:** A method of formal solicitation whereby sealed responses are requested from third-party suppliers and the award is made to the offeror whose proposal is determined to be the most advantageous to the County.
- 35. Responsible Bidder:** A person who has the capability in all respects to perform fully the contract requirements, and the experience, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

- 36. Responsive Bidder:** A person who has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation to bids or request for proposals.
- 37. Services:** Any professional or general service work performed which does not result in the delivery of goods or materials, e.g. repairs, training, survey, consultant, etc.
- 38. Sole Source:** A situation created due to the inability to obtain competition. May result because only one vendor or supplier possesses the unique ability or capability to meet the particular requirement of the solicitation.
- 39. Special Purchase:** A situation created when a purchase does not technically qualify as a sole source purchase but it is determined under the circumstances that there is only one logical choice as to a contractor to provide the necessary goods or services.
- 40. Specification:** In connection with a solicitation, a list or description of the characteristics of the commodities or services which will meet the County's requirements.
- 41. Surety:** A pledge or guarantee by an insurance company, bank, individual or corporation on behalf of the bidder/offeror which protects against default or failure of the principal to satisfy the contractual obligations.
- 42. User Department:** Any agency or office, whether headed by an appointed or elected official, for which the governing authority has budgetary responsibility and which is not exempt from the terms of this Purchasing Code.
- 43. Work:** The entire completed service, construction or the various separately identifiable parts thereof required to be furnished under the agreement documents.

6. PURCHASING PROCEDURES

Sec. 2-111. - Summary of General Purchasing Methods

This Purchasing Code recognizes two methods of procurement: competitive and non-competitive. The Director shall make the determination as to the type of procurement appropriate to secure all commodities, equipment and services for the County, its agencies and departments.

1. Competitive Procurement Methods

- A.** Competitive Sealed Bidding. In most cases the competitive sealed bid is the preferred method of purchase in the public sector and should be used whenever possible as it allows qualified, responsive bidders to compete on the basis of price. Generally, the following conditions must be met:
1. Clear and adequate specifications;
 2. Cost of materials, supplies, equipment, or services is in excess of \$74,999.99; and/or
 3. Revenue is expected to be in excess of \$74,999.99.
 4. Responsive and Responsible Bidder(s). Subject to approval by the Board of Commissioners, bids shall be awarded to the responsible bidder(s) who have submitted the lowest cost responsive bid(s), highest revenue responsive bid(s), or whose bid represents the best value to the County.
 5. Approval of Bid. All bid awards for amounts that cost in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99 shall be approved by the Board of Commissioners. In determining which method of approval will be utilized for multiyear contracts, the combined total potential cost to the County for all years of the proposed multiyear contract shall serve as the dollar threshold.
 6. The County specifically reserves the right to reject any conditional bid and will reject those that make it impossible to determine the true amount of the bid. Each item must be bid separately and no attempt is to be made to tie any item or items to any other item or items.

Unless otherwise provided herein, formal sealed bids must be obtained for any item or service which is expected to cost in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99, unless the competitive sealed bid process is either not applicable or is determined by the Director not to be in the best interest of the County as outlined herein. Information related to the process for competitive sealed bids is outlined herein in Section 2-111.

- B.** Competitive Sealed Proposal. When the following factors exist or use of the competitive sealed bid is either not practical or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposal. Factors include:
1. Whether quality, availability or capability is overriding in relation to price in procurement of technical supplies or technical or professional services;

2. Whether the initial installation needs to be evaluated together with subsequent maintenance and service capabilities;
3. Whether the market place will respond better to a solicitation permitting not only a range of alternate proposals, but evaluation and discussion of them before making the award;
4. Cost of equipment or services is in excess of \$74,999.99; and/or
5. Revenue is expected to be in excess of \$74,999.99.

Unless otherwise provided herein, formal sealed proposals must be obtained for any item or service which is expected to cost in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99, unless the competitive sealed proposal process is either not applicable or is determined by the Director not to be in the best interest of the County as outlined herein. Information related to the process for competitive sealed proposals is outlined herein in Section 2-111.

6. Evaluation of Proposal.

- a. Evaluation Criteria. The Director is authorized to develop policies and procedures to provide for an evaluation criteria for the Request for Proposals. The Director is further authorized to develop a policy to determine the composition of a Request for Proposal evaluation team, which will include, at the very least, a non-voting member from the Department of Central Services, one voting member from the Department of Finance if the estimated amount of the proposal is over \$250,000.00, and one voting member from the Division of Contract Compliance.
- b. Responsiveness Check. Each proposal shall be evaluated to determine whether it is responsive to the specifications and other terms and conditions contained in the Request for Proposals.
- c. Request for Clarification. Additional clarification of information may be requested of Proposers with the Department of Central Services initiating such requests.

7. Award of Proposal.

- a. Responsive and Responsible Proposal. Award shall be made to the responsive and responsible Proposer whose proposal is determined to be the most advantageous to the County based upon the evaluation factors set forth in the Request for Proposal.
- b. Approval of Proposal. The Board of Commissioners shall approve all awards where cost is in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99. In determining which method of approval will be utilized for multiyear contracts, the combined total potential cost to the County for all years of the proposed multiyear contract shall serve as the dollar threshold.
- c. Rejection or Deferral of Proposal. The Director may reject, or

may defer award for any proposal when he or she deems such action to be in the best interest of the County.

C. Sec. 2-115. - Informal Purchase.

1. General. Procurements that involve amounts up to \$74,999.99 do not require a formal sealed bid or proposal process. However, the processes used for this type of procurement will include as much competition as is consistent with the anticipated cost of the procurement and the best interest of the County as determined by the Director. In general, the Department of Central Services staff shall obtain commodities, equipment and services competitively through written quotes where cost is up to \$74,999.99 with a minimum of three quotes required unless adequate source supply is not available.
2. Prohibition of Improper Use of Informal Purchase Processes. Purchases may not be artificially divided as to constitute an informal purchase, thereby circumventing the dollar limit requirement for competitive sealed bids or proposals. Violations of this policy will be enforced pursuant to the Clayton County Civil Service Rules regarding improper use of County resources and the Clayton County Ethics Code regarding misuse of County assets.
3. Procedures. Procurement within this category shall be made in accordance with the informal purchase procedures established by the Director. These procedures will cover purchases delegated to user departments as well as those handled through the Department of Central Services.

Such operational procedures shall provide for obtaining adequate and reasonable competition for the commodities, equipment and services being purchased. Further, such operational procedures shall require the preparation and maintenance of written records to adequately document the competition obtained, properly account for the funds expended and facilitate audit and review of the transaction.

4. Informal Purchase by User Departments.

- a. Authority. Each user department, is granted authority to handle purchases where the cost is \$5,000.00 or less. Purchases shall not be artificially divided so as to circumvent the \$5,000 limit. Purchases within this category shall be made in accordance with the informal purchase procedures established by the Director. The user department shall conduct such competition as is practicable under the circumstances, including but not limited to verbal and/or written quotes from three or more suppliers, and such purchases must be approved in writing by the Department Director prior to purchase. Each Department Director shall keep written documentation of quotations and receipts for each purchase in separate files for auditing purposes; failure to maintain such documentation and produce such documentation upon request may result in loss of this purchasing authority at the Director's discretion.

2. Non-Competitive Procurement Methods

- A. Sole Source Purchase.** A sole source purchase may be used when only one supplier is able to fill the requirements for the intended commodities, goods and/or services. All sole source purchases must be authorized by the Director. Prior to authorization, written justification must be signed by the Department Director and submitted to the Department of Central Services for evaluation. Information related to this process is outlined in Section 2-116 of the Clayton County Code of Ordinances.
- B. Special Purchases.** The Director may initiate a special purchase where he/she determines that such purchase does not technically qualify as a sole source purchase under the Purchasing Code. If determined as appropriate by the Director, any special purchase under this section shall be made with such competition as is practicable under the circumstances. The Director may determine under appropriate circumstances that there is only one logical choice as to a contractor to provide the goods or services necessitated by the special purchase. The special purchase must be authorized and certified by the Director or his/her designee with thorough reasoning given for the special purchase designation. Special Purchases where cost is in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99 must be authorized by the Board of Commissioners. Information related to the process is outlined in Section 2-117 of the Clayton County Code of Ordinances.
- C. Emergency Purchases.** An emergency exists when there is a threat to the health, welfare or safety of people or property, when there is a material loss of essential government services. The competitive process should be followed whenever possible in an emergency as long as the ability to respond to the emergency is not seriously impaired. The emergency purchase process is reserved for rare and extreme circumstances. Therefore, rarely will the emergency purchase process be utilized. All emergency purchases must be authorized by the Director or his/her designee with direct authorization by the Department Director requesting the emergency purchase. Emergency purchases of \$74,999 or greater must be ratified by official action of the Board of Commissioners at the next available Commission meeting and the reason for the emergency must be contained in the minutes of the meeting. Information related to the process is outlined Section 2-116 of the Clayton County Code of Ordinances.
- D. Cooperative Purchase.** The County may participate in a cooperative purchase for the acquisition of commodities, supplies and services through an authorized contract of any other governmental entity or agency whether federal, state or local, provided a competitive procurement process has been followed and the cooperative purchase is determined by the Director to be in the best interest of the County. The Director or his/her designee must certify that the acquisition of commodities, supplies or services are an exact match of those items offered to the other governmental entity or agency. Information related to the process is outlined herein in Section 2-119 of the Clayton County Code of Ordinances.
- E. Governmental and Affiliated Entity Purchase.** The County may purchase services and incidental commodities from other federal and state or local governments when determined to be in the best interest of the County. Information related to the process is outlined herein in Section 2-120 of the Clayton County Code of Ordinances.

3. Sec. 2-143. - Mandatory Pre-Qualification Process.

- A.** Public Works Construction Contracts Governed by O.C.G.A. § 36-91-20 *et seq.* The Director is hereby delegated the authority to administer a process for mandatory pre-qualification of prospective bidders for public works construction contracts pursuant to O.C.G.A. § 36-91-20(f).
- B.** All Other Contracts. The Director is authorized to determine if a process for mandatory pre-qualification for competitive sealed bids and competitive sealed proposals of bidders or proposers is appropriate for the procurement of a particular commodity, good or service, subject to these requirements:
 - 1.** criteria for pre-qualification shall be reasonably related to the project or the quality of the work;
 - 2.** criteria for pre-qualification shall be available to any prospective bidder requesting such information;
 - 3.** there shall be a method of notifying prospective bidders of the criteria for pre-qualification; and
 - 4.** there shall be a procedure for a disqualified bidder to respond to his or her disqualification to the Director; however, such procedure shall not include a formal appeal or bid protest.

No bid or proposal shall be eligible for consideration by the County from a prospective bidder who has not been pre-qualified on the procurement in question where the Invitation to Bid or Request for Proposals specified that pre-qualification would be mandatory.

4. Sec. 2-93. - Exemptions.

All commodities, equipment and services shall be centrally procured through the Department of Central Services; exemptions are to be narrowly construed with the default being procurement through a competitive process. When a competitive process is not practical the following commodities, equipment and professional services may be procured via alternative noncompetitive methods:

- A.** works of art for public places, or other creative/artistic endeavors that require a particular and demonstrated skill or talent to include, but not limited to, artists, musicians, and writers;
- B.** printed copyright material including published books, maps, periodicals and technical pamphlets (not including software for computer systems), except where a greater savings can be realized by a quantity purchase;
- C.** dues, memberships and board member fees;
- D.** subscriptions;
- E.** utilities, where there is no reasonable basis for competitive procurement, for example electric power, water and sewer;
- F.** legal services procured by the Chief Staff Attorney;
- G.** "professional services" which refer to services that require specialized knowledge and training, often through long and intensive academic

preparation, or in-depth experience in a particular field or discipline. Professional services generally consist, in material part, of advice, evaluation, consultation, training, planning, design, obtaining information/direct assistance, or other effort involving the exercise of judgment, discretion, and knowledge, including, without limitation, a service provided by a person whose profession is licensed or regulated by the state or federal government and other related agencies.

- H. legal advertisements including, but not limited to bid/proposal solicitations placed by boards that are required by law to publicly advertise their meetings or actions in the legal organ of the County;
- I. antiques and other unique assets of historical value;
- J. purchases made from, or the disposition to, other federal, state and local governments, associations and state universities and colleges when determined by the Director to be in the best interest of the County.

7. Best and Final Offers (BAFO)

1. The Clayton County Central Services Department may elect to solicit best and final offers from offerors under consideration for award after the initial evaluation of proposals. Best and final offers can only be utilized when evaluating requests for proposals (RFPs) and should never be used in the competitive sealed bid process.
 - A. When soliciting best and final offers, the Clayton County Central Services Department will establish a common date and time for the submission of best and final offers, and will only allow the submission of information related to pricing.
 - B. No changes will be allowed with any technical information submitted unless it is in the best interest of Clayton County to change requirements and require another submission of best and final offers.
 - C. After the best and final offer is submitted, no further negotiations shall be conducted with the offerors.
 - D. The decision to award will be based on the final evaluation, including the best and final offer.
 - E. Offerors must be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.
 - F. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible to being selected for award for the purpose of clarification to ensure full understanding of and responsiveness to the solicitation requirements.
 - G. Offerors shall be accorded fair and equal treatment with respect to the opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers.
 - H. In conducting discussions, there shall be no disclosure of information derived from proposals submitted by competing offerors.

8. Addenda

1. Any changes to the original bid or proposal will be made in writing in the form of an addendum.
 - A. It will be e-mailed to all suppliers who have originally received or requested the solicitation.
 - B. All questions and requests for additional information must be directed to the names on the bid or proposal to ensure that all suppliers receive accurate and consistent information.
 - C. If additional time is needed for the proposer to respond, an addendum should be issued to extend the due date of the solicitation.

9. Pre-bid and Pre-Proposal Conferences

1. Certain types of bids and proposals facilitate the need for pre-bid and pre-proposal meetings.
 - A. These meetings are held in order to clarify specifications and expectations, to answer supplier questions specific to a certain bid or proposal or to allow suppliers to conduct an on-site review and inspection.
 - B. Pre-bid and pre-proposals may be mandatory or voluntary.
 - C. The bid document will state whether a pre-bid meeting is mandatory or voluntary.

10. Process for Opening Bids and Proposals

1. Bids and proposals shall be opened publicly in the presence of one or more witnesses on the date and at the time and place specified in the specification documents.
 - A. Suppliers and interested parties are invited to attend.
 - B. During the opening of the bid, the following information will be read aloud: the name of each supplier submitting a sealed bid, pricing information and any other relevant information. At this time all bids are considered to be open record.
 - C. During the opening of proposals, only the name of each supplier shall be announced. No other information will be disclosed nor shall the proposal be considered open record until the proposal is awarded.
 - D. Once the bid or proposal is opened, copies of the documents are forwarded to the user departments for their evaluation and recommendation.
 - E. Late bids. Bids or proposals received after the date and time stated in the invitation to bid will not be accepted.

11. Responsibility of Bidders

1. An apparent low bidder may not be recommended for award of a bid or contract if they are found to be non-responsible. The Director of Central Services, setting forth the reasons for non-responsibility, shall inform the "non-responsible" bidder via written letter. Reasons that a supplier may be deemed non-responsible are as follows:
 - A. Previous supplier performance problems as documented in the supplier performance file, maintained by the Central Services Department.
 - B. Failure to meet contractual obligations after the award has been made.
 - C. Failure to conform to required delivery, specifications or detailed requirements.
 - D. Submission of a bid or offer in such a manner that would prevent the establishment or determination of a firm bid price. Such qualifications would include refusing to hold firm prices or submitting bid prices subject to manufacturer increases/decreases, market conditions or minimum order quantities.
 - E. Submission of a bid that is contingent upon receiving the award of another bid.
 - F. Failure to provide a bid surety or meet insurance requirements, when specifically required in the bid.
 - G. Submission of solicitation exceptions, when not acceptable to Clayton County based on its own best interests.

12. Post Bid/Proposal Award

1. When an award of a bid or proposal is made, a purchase order is issued, a contract is prepared or a price agreement is established.
 - A. Suppliers awarded annual contracts receive an annual notice followed by orders from the user departments in the form of a voucher.
 - B. When contracts are issued for projects or services, the supplier returns the signed contract along with any required insurance and bonding documents.
 - C. A copy of the executed contract, along with a notice to proceed, is sent to the successful supplier so that work may proceed.

13. Sec. 2-140 – Renewals and Extension

1. General provisions. Some contracts contain renewal clauses describing the conditions under which it may be renewed. The user department(s) must certify in writing to the Department of Central Services that the contractor(s) has performed satisfactorily and met all of the requirements set forth in the original award. Renewals will be executed in the Directors discretion.
2. Approval Authority. The Director shall approve renewals of existing contracts that provide renewal provisions with no need for additional funding. The Board of Commissioners hereby delegates to the Director or his/her designee the right to approve amendments that serve only to extend the time to complete the contract with no need for additional funding.

14. Sec. 2-136– Change Orders and Contract Modifications

Modifications are written changes to a contract or purchase order that revise the quantities or make changes within the scope of services and may include an extension of time to complete the contract. A change order is a contract modification.

1. General Provisions. Except as hereinafter provided, any change order or other modification of a contract term shall be approved by the Board of Commissioners.
2. Chief Operating Officer Authority.
 - a. The Chief Operating Officer or his/her designee shall have authority to approve all change orders to purchase orders and contracts up to an Absolute Value of 20% of the original contract, **provided the total change order amount is less than \$74,999.99.**
 - b. If the original contract or purchase order price did not exceed \$74,999.99, but the Change Order will make the total price of the contract exceed \$74,999.99, then the change order requires approval by official action of the Board of Commissioners.
 - c. Change Orders to contracts that did not require official action of the Board of Commissioners upon the original execution thereof and which amend the scope of work, term, time and/or total cost not exceeding \$74,999.99 may be approved by the Chief Operating Officer or his/her designee in the same manner as the original contract.
3. Director of Central Services Authority.
 - a. The Director of Central Services and/or his/her designee shall have authority to approve all change orders to purchase orders and contracts up to an **Absolute Value of \$50,000.00**
 - b. If the original contract or purchase order price did not exceed \$50,000.00, but the Change Order will make the total price of the contract exceed \$50,000.00, then the change order requires either approval by the Chief Operating Officer for purchases up to \$74,999.99 or official action of the Board of Commissioners for purchases that exceed 74,999.99.
 - c. Change Orders to contracts that did not require approval of the Chief Operating Officer or official action of the Board of Commissioners upon the original execution thereof and which amend the scope of work, term, time and/or total cost not exceeding \$50,000.00 may be approved by the Director or his/his designee in the same manner as the original contract.

15. Sec. 2-133 Penalties for Non-Performance

1. Performance problems documented by the user department and forwarded to the Central Services Department will be reviewed and every effort will be made to resolve the issue.
 - A. Should a performance problem exist that cannot be resolved with the intervention of the Central Services Department, a supplier may be placed on the ineligible source list.
 - B. Any supplier placed on the ineligible source list by the Central Services

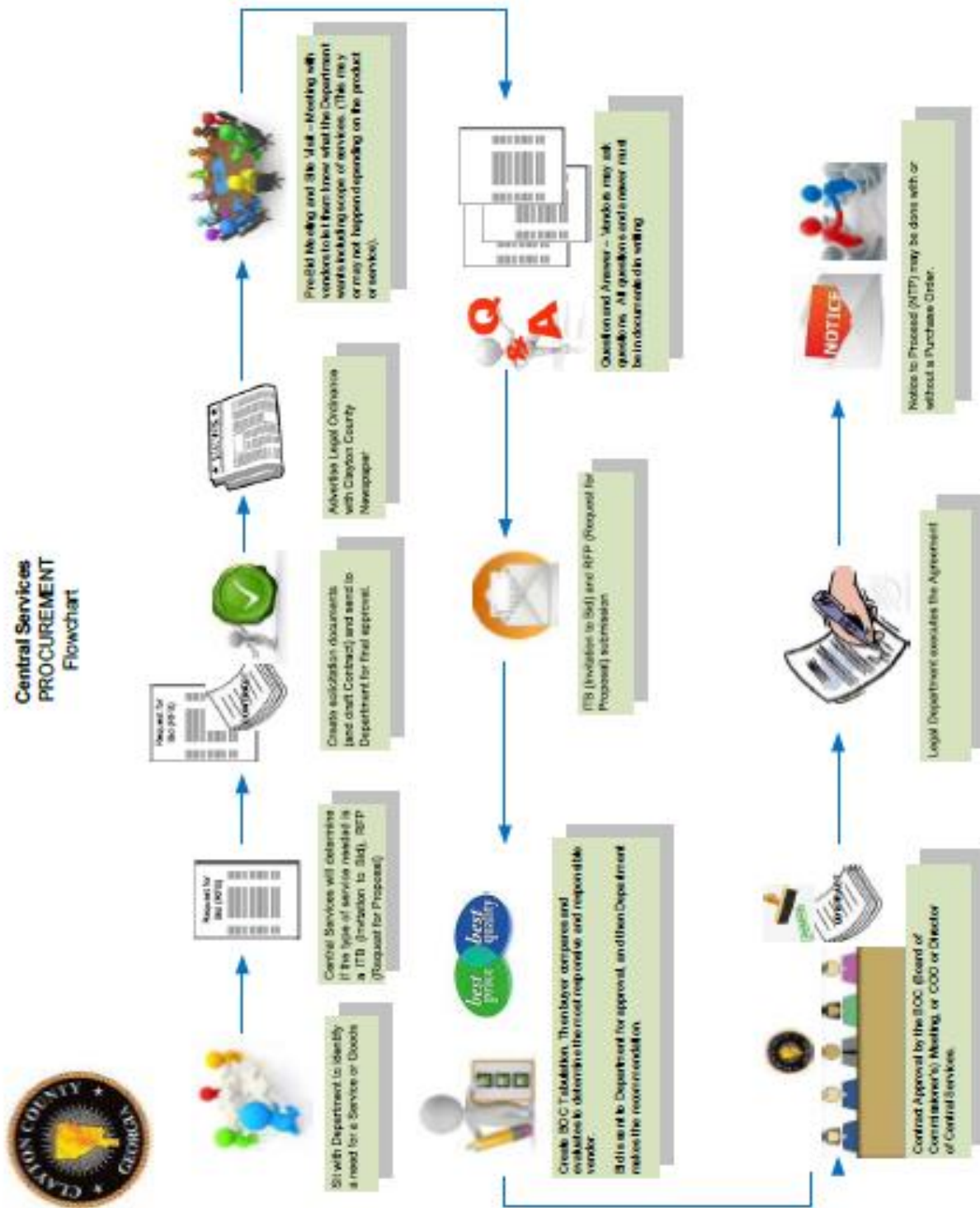
Department will not be eligible to provide any commodities and services to the county during the time such firm remains on the list.

- C. The length of time a supplier remains on the list is dependent on the severity of the performance problem, not to exceed three years.
- D. The following are persons or companies who may be placed on the ineligible source list:
 - 1. Any person who submits a bid or proposal in bad faith.
 - 2. Any person who willfully or repeatedly breaches a contract with the county.
- E. Any person who repeatedly refuses to accept a bid or proposal award.
- F. Any person who has established a pattern or practice of unethical or immoral business practices.
- G. Any person who has been convicted of a crime involving moral turpitude.
- H. Any person, who is owned, controlled or managed, in whole or in part by any other person described in (1) through (5) above.

16. **Sec. 2-133 Responsibility of Bidders**

- 1. Sub-Section (B): Supplier Performance Rating.
 - a. The Director is authorized to establish a supplier performance rating system for use in eliminating those suppliers who fail to perform or perform unsatisfactorily. Rating system may be used for evaluation and award of bids and contracts.
 - b. **The Quarterly Vendor Performance Evaluation Form** (Exhibit 5) is utilized to inform Central Services of service, performance, quality, or materials for the Contract.
 - c. **Form must be signed by the Department Director**

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ARTICLE IV. - PURCHASES AND PROPERTY DISPOSITION^[6]

Footnotes:

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Editor's note— Ord. No. 2017-45, § 1, adopted June 6, 2017, amended Art. IV in its entirety to read as herein set out. Former Art. IV, §§ 2-91—2-158, pertained to similar subject matter, and derived from Code 1973, §§ 2-2-30—2-2-32, 2-2-38—2-2-46, 2-2-55—2-2-64, 2-2-71, 2-2-72; Ord. No. 92-63, § 1, 8-18-92; Ord. No. 92-86, § 1, 9-1-92; Ord. No. 2004-105, §§ 1(3), (4), 7-20-04; Ord. No. 2001-199, § 1, 12-7-04; Ord. No. 2007-54, § 1, 3-20-07; Ord. No. 2009-163, § 1, 10-13-09; Ord. No. 2012-229, § 2, 11-6-12; Ord. No. 2014-84, § 1, 4-15-14; Ord. No. 2014-314, § 1, 12-2-14; Ord. No. 2016-164, § 1, 9-6-16; Ord. No. 2017-29, § 1, 5-2-17.

Cross reference— Disposition of found, recovered property, § 54-26 et seq.

DIVISION 1. - GENERAL PROVISIONS

Sec. 2-91. - Intent.

This Purchasing Code shall govern all acquisitions and dispositions by Clayton County of commodities, equipment and services and all related contracts and agreements including those that may generate revenue. All commodities, equipment and services shall be centrally procured through the department of central services. A competitive procurement process shall be used to procure all commodities, equipment and services unless otherwise provided for in this Purchasing Code.

This Purchasing Code supersedes and repeals all previously existing purchasing ordinances, specifically Clayton County Code, Part I, Chapter 2 "Administration", Article IV "Purchases and Property Disposition", Sections 2-91 et seq., Clayton County Code, Part I, Article II "Board of Commissioners", Sections 2-31—2-36, and other ordinances or resolutions to the extent they are inconsistent with the provisions herein.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-92. - Interpretation and purpose.

- (a) *Interpretation.* This Purchasing Code shall be construed and applied to promote its underlying purposes and policies.
- (b) *Purpose.* The underlying purposes and policies of this article are:
 - (1) to obtain the best value in terms of quality, service and price when expending public funds;
 - (2) to foster effective, fair and broad-based competition for public procurement within the free enterprise system; and
 - (3) to provide safeguards for the maintenance of quality, integrity and equity in the purchase and disposition of county property.
- (c) *Rules of construction.* In this Purchasing Code unless the text requires otherwise:
 - (1) Words in the singular number include the plural, and those in the plural include the singular;
 - (2) Words of a particular gender include any gender and the neuter, and when the tense so indicates, words of the neuter gender may refer to any gender;
 - (3) "May" shall be permissive and not mandatory;
 - (4) "Shall" shall be mandatory and not permissive; and
 - (5) Terms, which are not specifically defined herein, shall have their usual and customary meanings.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-93. - Definitions.

Absolute value. The numerical value of an acquisition or change order request without regard to its sign.

Acquiring department. The department, division, board, authority, or other unit of Clayton County government under whose authority, on whose behalf, or for whose use a commodity, service, or real property is requested or acquired or a contract or agreement relating thereto is obtained.

Acquisition. A transaction in which the county purchases, orders, contracts for, or otherwise agrees to obtain for value any commodity, or service, or combination thereof.

Best and final offer (BAFO). In a competitive negotiation, the final proposal submitted after negotiations are completed that contains the proposer's most favorable terms for price, series and products to be delivered.

Bid. Submission of information from a bidder that describes the bidder's commodities or services, and any other information necessary to respond to the specifications and other requirements set forth in an invitation to bid.

Bid bond. An insurance agreement accompanied by a monetary commitment, by which a surety accepts liability and guarantees that the bidder will not withdraw the bid.

Brand name or equal specification. A specification limited to one or more items by manufacturer's names or catalogue numbers to describe the standard of quality, performance, and other salient characteristics needed to meet county requirements, and which provides for the submission of equivalent products.

Brand name specifications. A specification limited to one or more items by manufacturers' names or catalogue numbers.

Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.

Change order. A written order that alters any term or provision of a two-party contract or purchase order, including but not limited to revisions that change the scope of the work to be furnished, the product to be purchased, the price of the purchase, and/or the length of the term of the contract or purchase order.

Commodity. Any moveable, tangible article of trade or commerce.

Consultant. A person who has expertise because of education or experience that qualifies him or her to provide specialized services or advice.

Contract. Any agreement, purchase order, lease, or other document which creates or is intended to create binding reciprocal obligations including, without limitation, any document evidencing a bid or proposal award which has been accepted by the bidder.

Contractor. Any person who contracts to provide commodities or services to the county.

Cooperative purchase. An arrangement whereby two or more public procurement units purchased from the same supplier using a single invitation to bid or request for proposal.

Department director. The director of the user department requesting the acquisition or disposition.

Director. The director of the department of central services.

Emergency purchase. A purchase made due to an unexpected urgent request where health and safety of the conservation of public resource is at risk. Usually formal competitive bidding procedures are waived.

Employee/official. An individual drawing a salary or wage from Clayton County, whether elected or not, any member of a board appointed by the governing authority, or any elected or appointed officer of Clayton County.

Family. Family means a person who is related to an official or employee as spouse or as any of the following whether by marriage, blood or adoption: parent, child, brother, sister, aunt, uncle, niece, nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, brother-in-law or sister-in-law.

Formal, written contract. Written agreement between Clayton County and third-party supplier(s) which creates or is intended to create binding reciprocal obligations to purchase products or services and contains the terms and obligations which the parties must adhere to. Formal, written agreements may be signed by more than two parties and require law department approval.

Ineligible source list. An approved compilation of individuals, firms, and/or businesses that are not eligible to participate as a bidder/proposer, and that are not eligible to contract with Clayton County for a period of time up to three years.

Invitation to bid. A method of formal solicitation requesting prospective third-party suppliers to submit formal sealed price bids. The award is made to the lowest responsible and responsive bidder, based on the response criteria set forth in the invitation to bid.

Local vendor. A business or supplier that operates and maintains a staffed, fixed, physical place of business within Clayton County, and has held a valid business license from Clayton County or a city located within Clayton County for at least one year.

Material fact. One which constitutes substantially the consideration of the contract, or without which it would not have been made.

Multiyear contract. An agreement that lasts longer than a twelve-month period as permitted by O.C.G.A. § 36-60-13 and has been duly approved under the authority of this Purchasing Code.

Offeror. Any person who has submitted a bid, quotation or proposal to the county or otherwise offered to form a contract with the county.

Payment bond. A financial or contractual instrument issued by a surety that guarantees that subcontractors will be paid for labor and materials expended on the contract.

Performance bond. An instrument executed subsequently to award, by successful bidder that protects the county from loss due to the bidder's inability to complete the contract as agreed.

Person. Any individual, firm, business or other legal entity.

Professional service. Services that require specialized knowledge and training, often through long and intensive academic preparation, or in-depth experience in a particular field or discipline. Professional services generally consist, in material part, of advice, evaluation, consultation, training, planning, design, obtaining information/direct assistance, or other effort involving the exercise of judgment, discretion, and knowledge, including, without limitation, a service provided by a person whose profession is licensed or regulated by the state or federal government and other related agencies.

Proposal. Submission of information from a proposer (including a consultant) which states how that proposer intends to fulfill the specifications and other requirements described in a request for proposal.

Proprietary information. Any information which is available to an employee only because of the employee's status as an employee of Clayton County and is not a matter of public knowledge or available to the public on request.

Purchase order. A written sales contract between the county and third party supplier(s) authorizing the delivery of goods or services and detailing the exact products or services to be rendered including such information as prices, descriptions, payment terms, quantities, date of performance, shipping and all other conditions and obligations. A purchase order is a contract but does not need law department approval.

Qualified products list. An approved list of supplies, services or construction items described by model or catalogue numbers, which prior to competitive solicitation, the county has determined will meet the applicable specification requirements.

Request for proposals. A method of formal solicitation whereby sealed responses are requested from third-party suppliers and the award is made to the offeror whose proposal is determined to be the most advantageous to the county.

Responsible bidder. A person who has the capability in all respects to perform fully the contract requirements, and the experience, reliability, capacity, facilities, equipment and credit which will assure good faith performance.

Responsive bidder. A person who has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation to bids or request for proposals.

Services. Any professional or general service work performed which does not result in the delivery of goods or materials, e.g. repairs, training, survey, consultant, etc.

Specification. In connection with a solicitation, a list or description of the characteristics of the commodities or services which will meet the County's requirements.

Sole source. A situation created due to the inability to obtain competition. May result because only one vendor or supplier possesses the unique ability or capability to meet the particular requirement of the solicitation.

Special purchase. A situation created when a purchase does not technically qualify as a sole source purchase but it is determined under the circumstances that there is only one logical choice as to a contractor to provide the necessary goods or services.

Surety. A pledge or guarantee by an insurance company, bank, individual or corporation on behalf of the bidder/offeror which protects against default or failure of the principal to satisfy the contractual obligations.

User department. Any agency or office, whether headed by an appointed or elected official, for which the governing authority has budgetary responsibility and which is not exempt from the terms of this Purchasing Code.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-94. - Exemptions.

All commodities, equipment and services shall be centrally procured through the department of central services; exemptions are to be narrowly construed with the default being procurement through a competitive process. When a competitive process is not practical the following commodities, equipment and professional services may be procured via alternative noncompetitive methods:

- (1) works of art for public places, or other creative/artistic endeavors that require a particular and demonstrated skill or talent to include, but not limited to, artists, musicians, and writers;
- (2) printed copyright material including published books, maps, periodicals and technical pamphlets (not including software for computer systems), except where a greater savings can be realized by a quantity purchase;
- (3) dues, memberships and board member fees;
- (4) subscriptions;
- (5) utilities, where there is no reasonable basis for competitive procurement, for example electric power, water and sewer;
- (6) legal services procured by the chief staff attorney;
- (7) "professional services" which refer to services that require specialized knowledge and training, often through long and intensive academic preparation, or in-depth experience in a particular field or discipline. Professional services generally consist, in material part, of advice, evaluation, consultation, training, planning, design, obtaining information/direct assistance, or other effort involving the exercise of judgment, discretion, and knowledge, including, without limitation, a service provided by a person whose profession is licensed or regulated by the state or federal government and other related agencies.
- (8) legal advertisements including, but not limited to bid/proposal solicitations placed by boards that are required by law to publicly advertise their meetings or actions in the legal organ of the county;
- (9) antiques and other unique assets of historical value;
- (10) purchases made from, or the disposition to, other federal, state and local governments, associations and state universities and colleges when determined by the director to be in the best interest of the county.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-95. - Application of federal and state law.

It is intended that this Purchasing Code shall conform to all applicable provisions of the laws of the United States and of the State of Georgia, and the provisions hereof shall be so construed wherever possible. In the event any portion of this Purchasing Code shall be declared invalid for its failure to conform to state or federal law, such invalidity shall not affect the remaining portions hereof. Notwithstanding any other provision of this Purchasing Code, the county may enter into any contract, follow any procedure, or take any action that is otherwise at variance with this Purchasing Code if necessary or convenient to receiving funds from the government of the United States or the State of Georgia.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-96. - Public access to procurement information.

Interested persons shall have access to information regarding procurement transactions of Clayton County in accordance with county policy, Clayton County Code of Ordinances, Article 5, Section 2-160, et seq., and the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-97. - Ethics.

It is the policy of Clayton County to seek the best overall value when procuring goods and services. Toward this end, the county finds and declares that its objectives will best be achieved through an open, competitive process with a broad range of responsible suppliers wishing to furnish products and services to the county. Clayton County will set up and conduct a purchasing program that maximizes service benefit to the community and awards contracts to suppliers who offer the best value.

- (1) Clayton County declares that employees and officials, along with those wishing to do business with the county, have the shared responsibility for avoiding biased, anticompetitive or unethical practices.
- (2) Clayton County employees, officials, and their family members are prohibited from seeking, requesting, or receiving any material payment, gift, job offer, security, promise of future benefit, or any other tangible or intangible thing of value when such receipt has the potential to influence a procurement decision or to gain unfair advantage in a procurement competition, and as outlined in the County's Ethics Code found in Article 2, Section 70-61, et seq. and all other applicable policies.
- (3) Prospective suppliers must compete for county business within the parameters of the solicitation process and are prohibited from seeking to obtain inside information, attempting to skew the writing of specifications or influencing a procurement decision through any means outside the process established for the particular solicitation. This principle applies to any contractor, subcontractor, representative, employee, or agent that may be associated with a procurement transaction.
- (4) Ethical business practices are important both during a solicitation and after the decision to grant an award. To this end, the county seeks to establish relationships with suppliers whose ongoing ethical standards of business conduct are congruent with those outlined here. The director is charged with establishing methods for ongoing monitoring for non-compliance with these principles. The prohibition against the offering of or the acceptance of kickbacks, gratuities, payments or any other thing of value extends beyond and outside any specific procurement or solicitation. Violations by Clayton County employees and officials will be governed by the Clayton County Civil Service Rules and the Clayton County Code of Ethics, Clayton County Code of Ordinances, Art. II § 70-61, et seq.
- (5) A supplier's contract compliance history with Clayton County and other contractual parties is a valid element in the decision to award a solicitation.
- (6) Clayton County stipulates that the furtherance of its strategic goals for job creation, stability and growth in the tax base, business retention, and other fiscal and economic development objectives may be considered during the procurement process. The director is authorized to establish procurement initiatives consistent with the county's strategic economic development objectives. These procurement practices shall be applied consistently and equitably, and shall have a direct relationship to the county's goals.
- (7) Clayton County employees, officials, and their family members are prohibited from participation in any procurement decision or any gain of unfair advantage in a procurement competition as a result of contemporaneous employment with a potential or actual business partner. When a conflict of interest is discovered, the employee involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter. If an actual violation occurs or is not disclosed and remedied, the employee involved may be reprimanded, suspended, or dismissed pursuant to the Clayton County Civil Service Rules and the supplier or potential supplier may be placed on the ineligible source list and/or have their existing contract canceled.
- (8) It is unethical for any Clayton County employee or official to purchase goods and/or services from a county contract for personal use, unless the goods and/or services are made available to employees through the contract specifically for that purpose.
- (9) Individuals, firms and businesses seeking an award of a Clayton County contract may not initiate or continue any verbal or written communications regarding a solicitation with any county officer, elected official, employee or other county representative other than the department of central services employee named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award by the board of commissioners, unless specified otherwise herein. Attempting to influence the outcome of any given contract prior to a recommendation of award to the board of commissioners is strictly prohibited. The director will review alleged violations of this prohibition. If the director determines that such a communication has compromised the competitive process, the offer submitted by that person may be disqualified

from consideration for award, and that person may, among other things, be placed on the ineligible source list. Violations by Clayton County employees and officials will be governed by the Clayton County Civil Service Rules. Violations may also be subject to prosecution under federal, state or local laws.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-98. - Appropriate expenditures.

In order to ensure fiscal responsibility of county resources all purchases shall comply with the applicable Clayton County policies and budget appropriations. To ensure that all purchases made are appropriate expenditures, each elected official or department director shall ensure that purchases made pursuant to his or her authority conform with all applicable law and budgetary appropriations.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-99. - Budgeted expenditures.

Consistent with the goal of ensuring fiscal stewardship of county resources it is the responsibility of each elected official or department director to ensure all purchases made for or by their agency or department are consistent with, and support the current approved budget prior to committing funds. Specific approval is required for certain capital purchases, as provided in the County Code of Ordinances.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-100. - Non discrimination.

Clayton County strictly prohibits discrimination in the conduct of any county government affairs based on age, color, religion, sex, race, national origin, veteran status, disability or any other basis prohibited. No individual or business shall be discriminated against on the grounds of same in connection with the award or performance of any contract paid for, in whole or in part, with funds of the county.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-101. - Severability

Should any court of this state declare any section, part, paragraph or clause of this Purchasing Code unconstitutional or invalid for any cause or reason, then such decision shall affect only that section, part, paragraph or clause so declared to be unconstitutional or invalid, and shall not affect any other section, part, paragraph or clause of this Purchasing Code.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 2. - PURCHASING ORGANIZATION

Sec. 2-102. - Centralized purchasing.

The Clayton County Board of Commissioners is authorized to require centralized purchasing for all departments and agencies of county government, so as to effect the utmost economy, consistent with efficiency and quality. The Clayton County Board of Commissioners is responsible for prescribing the procedure for requisitioning, requiring inventories of property, materials, supplies and equipment and adopting the necessary rules and requirements that will provide for the orderly purchasing of county materials, supplies and equipment. (Ga. Laws 1955, p. 2064, § 12A; Ga. Laws 1963, p. 2148, § 2)

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-103. - Purchasing department.

Per the Clayton County Board of Commissioner's authority to require centralized purchasing for the county, there is hereby created a purchasing department for Clayton County to be known as the department of central services. The purchasing department shall consist of a purchasing agent, to be known as the director of the department of central services, an assistant purchasing agent to be known as the assistant director of central services, and such subordinate personnel as may be employed from time to time by the board. (Ga. Laws 1955, p. 2064, § 12B; Ga. Laws 1963, p. 2148, § 2; Ga. Laws 1966, p. 2277, § 1; Ga. Laws 1973, p. 2005, § 4)

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-104. - Purchasing agent.

The Clayton County Board of Commissioners hereby creates the office of purchasing agent of Clayton County, to be known as the director of the department of central services. The director of the department of central services shall be a full-time employee of Clayton County, eligible to come under the Clayton County civil service system, and who shall be compensated in equal monthly installments from the funds of Clayton County in an amount to be fixed by the Clayton County Board of Commissioners. The director of the department of central services shall devote his/her entire time to the duties of his office and shall keep such office hours as the board of commissioners shall designate. The director of the department of central services shall give a surety bond, signed by a surety company, licensed to transact business in this state, to be approved by the ordinary of Clayton County, in the sum of \$25,000.00, payable to the ordinary and his successors in office, and conditioned upon the satisfactory discharge of his duties in carrying out the conditions thereof, which bond may be sued upon in the name of the ordinary, either on his own motion or by direction of the grand jury of the county. The premium for the bond shall be paid from the funds of Clayton County.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-105. - Deputy purchasing agent.

The Clayton County Board of Commissioners hereby creates the office of deputy purchasing agent of Clayton County, to be known as the assistant director of the department of central services. The term of office for the deputy purchasing agent shall be concurrent with the term as assistant director of the department of central services. The deputy purchasing agent shall assume the duties of the purchasing agent in his/her absence.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-106. - Authority and responsibility of the department of central services.

The department of central services shall serve all of Clayton County Government and have the authority to solicit for the procurement of required commodities, equipment and services in accordance with Georgia law and this Purchasing Code. No official or employee of the county shall make any purchase for or on behalf of the county of any commodities, equipment or services of any kind whatsoever except through the department of central services.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-107. - Authority and responsibility of the director of the department of central services.

(a) *Responsibilities.* The director of the department of central services shall, except as otherwise specified herein, be responsible for the administration of all transactions governed by the provisions of this Purchasing Code and shall serve as the principal procurement officer of the county. Unless otherwise provided, any duties and powers of the director may be delegated by him/her to subordinate purchasing staff members and other employees.

The director shall monitor compliance with this Purchasing Code and shall implement procedures to review procurements; establish and maintain programs for specification development, contract administration, and inspection, testing and acceptance, in cooperation with the user departments; maintain a record of all purchases made via the competitive and non-competitive purchase process; and enforce the ethical purchasing policy of the county.

The director shall endeavor to keep informed of current developments in the field of procurement, prices, market conditions and new products; and secure for Clayton County Government, the benefits of research conducted in the field of procurement by other governmental jurisdictions, national technical societies, trade associations having national recognition such as the National Institute of Governmental Purchasing, Inc., and by private businesses or organizations.

(b) *Procurement Authority.*

- (1) The director is authorized to establish the methods and procedures to be used in the purchase of commodities, goods and services that cost less than \$74,999.99 or that are expected to generate revenue less than \$74,999.99.
- (2) Unless otherwise provided in this code, the purchase of commodities, goods and services that cost more than \$74,999.99 or that are expected to generate revenue of more than \$74,999.99 shall be competitively procured.

(c) Signature authority.

- (1) *Board of commissioners authority.* Those contracts in excess of \$74,999.99 shall be signed by the chairman or his/her designee after adoption and approval of the purchase by official action of the Clayton County Board of Commissioners.
 - (2) *Chief operating officer authority.* The chief operating officer or his/her designee shall have the authority to sign all formal, written contracts up to \$74,999.99.
 - (3) *Director of central services authority.* The director of the central services department or his/her designee shall have the authority to sign contracts up to \$50,000.00.
- (d) *Periodic reporting to the board of commissioners.* The director of central services shall submit to the board of commissioners reports on a monthly basis with the following information:
- (1) All contracts, contract modifications and/or change orders authorized by the Director of Central Services and/or the Chief Operating Officer (or his/her designee) pursuant to the procurement and signature authority permitted in subsections b and c of this division.
 - a. Such reports shall include a copy of the contract;
 - b. Such reports shall be included on board of commissioners' meeting agenda and entered on the minutes;
 - c. Such reports may include additional support documentation as deemed appropriate by the director of central services.
 - (2) Other reports that are requested by the board of commissioners.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-108. - Purchasing procedures.

The director is authorized to establish, implement and enforce written operational procedures governing internal functions of the department of central services relating to acquisitions and dispositions subject to this Purchasing Code. Such procedures shall, to the extent consistent with applicable law and this Purchasing Code, be based upon generally accepted public purchasing principles and practices and shall become effective upon approval by the board of commissioners. Additionally, these procedures may be revised, as necessary, through the same process used for their initial approval.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-109. - Bond.

The purchasing agent and deputy purchasing agent shall for himself/herself and his/her subordinate personnel give a blanket bond in the sum of \$75,000.00, payable to the board of commissioners or other county authority, conditioned upon the faithful performance by said official and his/her subordinate personnel of all duties under this article and for the faithful accounting to such county authority for all goods, supplies and money that may come into their hands in their official capacities and to indemnify and hold the county authority harmless for and on account of all of their acts in said positions, said bond to be given by said official before entering upon the discharge of his/her duties and maintained by said official during his/her entire term. The premium on said bond shall be paid out of the county treasury.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-110. - Disclaimer of responsibility for improper purchasing.

The board of commissioners may disclaim responsibility and liability for any purchase, expenditure, or agreement for expenditure arising from a procurement made in its name, or in the name of any governmental body under its authority, by an unauthorized person or any person acting outside this Purchasing Code or the authorization or delegation as provided in this Purchasing Code. The expense of any such disclaimed transaction may become the personal liability of the individual who acted improperly.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 3. - PURCHASING METHODS

Sec. 2-111. - Summary of general purchasing methods.

This Purchasing Code recognizes two methods of procurement: competitive and non-competitive. The director shall make the determination as to the type of procurement appropriate to secure all commodities, equipment and services for the county, its agencies and departments.

(1) *Competitive procurement methods.*

- a. *Competitive sealed bidding.* In most cases the competitive sealed bid is the preferred method of purchase in the public sector and should be used whenever possible as it allows qualified, responsive bidders to compete on the basis of price. Generally, the following conditions must be met:

1. clear and adequate specifications;
2. cost of materials, supplies, equipment, or services is in excess of \$74,999.99; and/or
3. revenue is expected to be in excess of \$74,999.99.

Unless otherwise provided herein, formal sealed bids must be obtained for any item or service which is expected to cost in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99, unless the competitive sealed bid process is either not applicable or is determined by the director not to be in the best interest of the county as outlined herein. Information related to the process for competitive sealed bids is outlined herein in section 2-113.

- b. *Competitive sealed proposal.* When the following factors exist or use of the competitive sealed bid is either not practical or not advantageous to the county, a contract may be entered into by use of the competitive sealed proposal. Factors include:

1. whether quality, availability or capability is overriding in relation to price in procurement of technical supplies or technical or professional services;
2. whether the initial installation needs to be evaluated together with subsequent maintenance and service capabilities;
3. whether the market place will respond better to a solicitation permitting not only a range of alternate proposals, but evaluation and discussion of them before making the award;
4. cost of equipment or services is in excess of \$74,999.99; and/or
5. revenue is expected to be in excess of \$74,999.99.

Unless otherwise provided herein, formal sealed proposals must be obtained for any item or service which is expected to cost in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99, unless the competitive sealed proposal process is either not applicable or is determined by the director not to be in the best interest of the county as outlined herein. Information related to the process for competitive sealed proposals is outlined herein in section 2-113.

- c. *Informal purchase.* Any purchase of commodities, goods and services less than \$74,999.99 will be considered an informal purchase. The director is authorized to establish the methods and procedures to be used in handling informal purchases. Unless otherwise specifically provided, such informal purchases will be obtained competitively through written quotes. In most instances, this may be accomplished through a purchase order and does not require a formal, written agreement. However, the director may, in his/her discretion, require that certain purchases be accomplished through formal, written agreement. Information related to the process for informal purchases is outlined herein in section 2-115.

(2) *Non-competitive procurement methods.*

- a. *Sole source purchase.* A sole source purchase may be used when only one supplier is able to fill the requirements for the intended commodities, goods and/or services. All sole source purchases must be authorized by the director. Prior to authorization, written justification must be signed by the department director and submitted to the department of central services for evaluation. Information related to the process for sole source purchases is outlined herein in section 2-116.
- b. *Special purchases.* The director may initiate a special purchase where he/she determines that such purchase does not technically qualify as a sole source purchase under the Purchasing Code. If determined as appropriate by the director, any special purchase under this section shall be made with such competition as is practicable under the circumstances.

The director may determine under appropriate circumstances that there is only one logical choice as to a contractor to provide the goods or services necessitated by the special purchase. The special purchase must be authorized and certified by the director or his/her designee with thorough reasoning given for the special purchase designation. Special purchases where cost is in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99 must be authorized by the board of commissioners. Information related to the process for special purchases is outlined herein in section 2-117.

- c. *Emergency Purchases.* An emergency exists when there is a threat to the health, welfare or safety of people or property, when there is a material loss of essential government services. The competitive process should be followed whenever possible in an emergency as long as the ability to respond to the emergency is not seriously impaired. The emergency purchase process is reserved for rare and extreme circumstances. Therefore, rarely will the emergency purchase process be utilized. All emergency purchases must be authorized by the director or his/her designee with direct authorization by the department director requesting the emergency purchase. Emergency purchases of \$74,999 or greater must be ratified by official action of the board of commissioners at the next available commission meeting and the reason for the emergency must be contained in the minutes of the meeting. Information related to the process for emergency purchases is outlined herein in section 2-118.
- d. *Cooperative purchase.* The county may participate in a cooperative purchase for the acquisition of commodities, supplies and services through an authorized contract of any other governmental entity or agency whether federal, state or local, provided a competitive procurement process has been followed and the cooperative purchase is determined by the director to be in the best interest of the county. The director or his/her designee must certify that the acquisition of commodities, supplies or services are an exact match of those items offered to the other governmental entity or agency. Information related to the process cooperative purchases is outlined herein in section 2-119.
- e. *Governmental and affiliated entity purchase.* The county may purchase services and incidental commodities from other federal and state or local governments when determined to be in the best interest of the county. Information related to the process for governmental and affiliated entity purchases is outlined herein in section 2-120.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-112. - Mandatory pre-qualification process.

- (a) *Public Works Construction Contracts Governed by O.C.G.A. § 36-91-20 et seq.* The director is hereby delegated the authority to administer a process for mandatory pre-qualification of prospective bidders for public works construction contracts pursuant to O.C.G.A. § 36-91-20(f).
- (b) *All other contracts.* The director is authorized to determine if a process for mandatory pre-qualification for competitive sealed bids and competitive sealed proposals of bidders or proposers is appropriate for the procurement of a particular commodity, good or service, subject to these requirements:
 - (1) criteria for pre-qualification shall be reasonably related to the project or the quality of the work;
 - (2) criteria for pre-qualification shall be available to any prospective bidder requesting such information;
 - (3) there shall be a method of notifying prospective bidders of the criteria for pre-qualification; and
 - (4) there shall be a procedure for a disqualified bidder to respond to his or her disqualification to the director; however, such procedure shall not include a formal appeal or bid protest.

No bid or proposal shall be eligible for consideration by the county from a prospective bidder who has not been pre-qualified on the procurement in question where the invitation to bid or request for proposals specified that pre-qualification would be mandatory.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-113. - Competitive sealed bidding process.

- (a) *Acquisitions greater than \$74,999.99.* Any commodity, good or service that is expected to cost in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99 shall be acquired through the competitive sealed bid process except as otherwise provided in this Purchasing Code.

- (b) *Dissemination of invitation to bid.* Public notice of an invitation to bid shall be given as required by Georgia law. The public notice shall contain a general description of the purchase, shall state the location where documents may be obtained and the date, time and place of bid opening. Notice of any required bonding and insurance shall be included in the public notice. A copy of such notice shall be posted on the county's website and in the office of the department of central services. In addition, the director, at his/her discretion, may elect to place an advertisement inviting bids in a newspaper of general circulation or utilize other methods of advertisement identified as likely to result in additional competition.
- (c) *Receipt of bid.* No written bid shall be eligible for consideration by the county unless it is placed in a sealed envelope or package and actually received by the department of central services by the date and time specified in the invitation to bid. All bids shall be stamped or annotated by the department of central services with the date and time of receipt and secured until the designated opening time. A bid delivered late shall not be eligible for consideration by the county.
- (d) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses on the date and at the time and place designated in the invitation to bid. The name of each bidder and such other information as the director deems appropriate shall be announced as the bids are opened. A record of bid information shall be recorded and available for public inspection.
- (e) *Withdrawal of bid.* Bids may be withdrawn at any time prior to the bid opening. After bids have been publicly opened, withdrawal of a bid shall be based only on a mistake in the bid due to a clerical mistake, arithmetic error or inadvertent omission of a quantity of work, labor or material.
- (f) *Bid evaluation.* Bids shall be evaluated based on the requirements set forth in the invitation to bid. No criteria may be used in bid evaluation that is not specifically set forth in the solicitation.
- (g) *Bid cancellation.* An invitation to bid may be canceled at any time or any or all bids may be rejected in whole or in part as may be specified in the solicitation, where it is in the best interest of the county.
- (h) *Bid award.*
 - (1) *Responsive and responsible bidder(s).* Subject to approval by the board of commissioners, bids shall be awarded to the responsible bidder(s) who have submitted the lowest cost responsive bid(s), highest revenue responsive bid(s), or whose bid represents the best value to the county.
 - (2) *Approval of bid.* All bid awards for amounts that cost in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99 shall be approved by the board of commissioners. In determining which method of approval will be utilized for multiyear contracts, the combined total potential cost to the county for all years of the proposed multiyear contract shall serve as the dollar threshold.
 - (3) *Rejection or deferral of bid.* The director may reject bids, or may defer bid awards to gather additional information, to complete evaluation or review of bids, to complete administrative tasks or for other documented business purposes, consistent with the best interest of the county.
 - (4) *Disqualification of bid.* The following types of bids shall be disqualified from consideration for a bid award:
 - a. a bid which is non-responsive;
 - b. a bid submitted without required bonds;
 - c. a bid submitted by a person on the Ineligible Source List;
 - d. a bid submitted by a person having been determined in violation of section 2-97 of this Purchasing Code; and/or
 - e. a bid submitted by a person who has litigation pending against the county, or anyone representing a firm or business in litigation against the county, not arising out of the procurement process, as further detailed herein.
 - (5) *Tie bids.* In the event two responsive bids are tied for the lowest price and the other terms and conditions of the two bids are substantially the same, the bid shall be awarded to the local firm if only one of the bidders has an office located within the boundaries of Clayton County. If neither or both of the firms both have offices located within the boundaries of Clayton County, the bid will be awarded by a coin toss.
- (i) *Appeal.*
 - (1) *Right to protest.* Any offeror that has submitted a bid for a particular purchase and believes they are aggrieved in connection with the solicitation or award, shall protest in writing to the director

after the date that the specific bid is submitted. All protests shall set forth in full detail the factual and legal basis for the protest and specific relief sought by the protestor. Protests that the protestor knew or should have known prior to submission of the bid must be submitted within three business days of the submission of the bid. Protests that the protestor knew or should have known subsequent to submission of the bid must be submitted within ten business days after the protestor knew or should have known of such basis, but in no event shall any protest be submitted more than ten business days after the award. Untimely protests will not be considered by the director and will be denied as moot. Decisions on timeliness by the director are not appealable.

- (2) *Awards during protest.* When a protest has been properly filed before the award has been approved by the board of commissioners at an open meeting, or before a purchase order has been signed and issued by the director, the director shall not award the contract until the protest has been settled; except, the director, with the approval of the chairman, after consultation with the user department, may make a written determination of the award without delay if necessary to protect substantial interests of the county.
- (3) *Availability of information.* Upon written request, the director shall make information that bears on the substance of the protest available to any interested party except where the information is proprietary, confidential, and exempt from disclosure or otherwise submitted or required to be withheld by law or regulation.
- (4) *Decision on protest.* If a protest is properly filed, the director shall inform the protestor of the decision in writing within fifteen business days, or if the director requires more than 15 business days, the director will advise the protestor within the initial ten days of the additional amount of time required to render a decision.
- (5) *Finality of decision.* A decision by the director is final and conclusive.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-114. - Competitive sealed proposal process.

- (a) *Acquisitions greater than \$74,999.99.* Unless otherwise provided herein, formal sealed proposals must be obtained for any item or service which is expected cost in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99, for which the competitive sealed bid process is either not applicable or is determined by the director not to be in the best interest of the county.
- (b) *Conditions for use.* This method of solicitation shall be used when the use of competitive sealed bidding is not practicable under the circumstances or is not in the best interests of the county. The following conditions may apply:
 - (1) Price is not the determining evaluating factor;
 - (2) Discussions with proposers is required;
 - (3) Proposers are required to provide methods and approaches to perform the specifications of or statements of work;
 - (4) The evaluation committee/user department desires to conduct interviews with proposers; and/or
 - (5) "Best value" awards are anticipated.
- (c) *Dissemination of proposal.* Proposals shall be disseminated through a request for proposal. Public notice shall be advertised as required by Georgia law. The public notice shall contain a general description of the item or service to be purchased, shall state the location where documents may be obtained and the date, time and place of proposal receipt. Notice of any required bonding and insurance shall be included in the public notice. A copy of such notice shall be posted on the county's website and in the office of the department of central services. In addition, the director, at his/her discretion, may elect to place an advertisement inviting bids in a newspaper of general circulation or utilize other methods of advertisement identified as likely to result in additional competition.
- (d) *Receipt of proposal.* No written proposal shall be eligible for consideration by the county unless it is placed in a sealed envelope or package and actually received by the department of central services by the date and time specified in the request for proposals. All proposals shall be stamped or annotated with the date and time of receipt and secured until the designated opening time. A proposal delivered late shall under no circumstances be eligible for consideration by the county.
- (e) *Proposal opening.* Proposals shall be opened publicly in the presence of one or more witnesses on the date and at the time and place designated in the request for proposals. The name of each proposer shall be announced.

- (f) Proposal cancellation. A request for proposals may be canceled at any time or any or all proposals may be rejected in whole or in part as may be specified in the solicitation, where it is in the best interest of the county.
- (g) *Proprietary information.* Information submitted by a proposer that is specifically marked "proprietary" shall not be disclosed by the county to other persons outside of the department of central services without prior notification to the proposer. Clayton County is required to comply with the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., and therefore, the county may not be able to protect all information submitted in any response.
- (h) *Evaluation of proposal.*
 - (1) *Evaluation criteria.* The director is authorized to develop policies and procedures to provide for an evaluation criteria for the request for proposals. The director is further authorized to develop a policy to determine the composition of a request for proposal evaluation team, which will include, at the very least, a non-voting member from the department of central services, one voting member from the department of finance if the estimated amount of the proposal is over \$250,000.00, and one voting member from the division of contract compliance.
 - (2) *Responsiveness check.* Each proposal shall be evaluated to determine whether it is responsive to the specifications and other terms and conditions contained in the request for proposals.
 - (3) *Request for clarification.* Additional clarification of information may be requested of proposers with the department of central services initiating such requests.
- (i) *Award of proposal.*
 - (1) *Responsive and responsible proposal.* Award shall be made to the responsive and responsible proposer whose proposal is determined to be the most advantageous to the county based upon the evaluation factors set forth in the request for proposal.
 - (2) *Approval of proposal.* The board of commissioners shall approve all awards where cost is in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99. In determining which method of approval will be utilized for multiyear contracts, the combined total potential cost to the county for all years of the proposed multiyear contract shall serve as the dollar threshold.
 - (3) *Rejection or deferral of proposal.* The director may reject, or may defer award for any proposal when he or she deems such action to be in the best interest of the county.
 - (4) *Disqualification of proposal.* The following types of proposals shall be disqualified for consideration for award:
 - a. A proposal submitted without required bonds;
 - b. A proposal submitted by a person on the ineligible source list;
 - c. A proposal which is non-responsive;
 - d. A proposal submitted by a person having been determined in violation of section 2-97 of this Purchasing Code; and/or
 - e. A proposal submitted by a person who has litigation pending against the county, or anyone representing a firm or business in litigation against the county, not arising out of the procurement process.
- (j) *Appeal.*
 - (1) *Right to protest.* Any proposer that has submitted a proposal for a particular purchase and believes they are aggrieved in connection with the solicitation or award, shall protest in writing to the director after the date that the specific proposal is submitted. No protest will be accepted or considered prior to the date the specific proposal is submitted; it will be considered untimely. All protests shall set forth in full detail the factual and legal basis for the protest and specific relief sought by the protestor. Protests that the protestor knew or should have known prior to submission of the proposal must be submitted within three business days of the submission of the proposal. Protests that the protestor knew or should have known subsequent to submission of the proposal must be submitted within ten business days after the protestor knew or should have known of such basis, but in no event shall any protest be submitted more than ten business days after the award. Untimely protests will not be considered by the director and will be denied as moot. decisions on timeliness by the director are not appealable.

- (2) *Awards during protest.* When a protest has been properly filed before the award has been approved and published in the minutes of the board of commissioners at an open meeting, or before a Purchase Order has been signed and issued by the director, the director shall not award the contract until the protest has been settled; except, the director, with the approval of the chairman, after consultation with the user department, may make a written determination of the award without delay if necessary to protect substantial interests of the county.
- (3) *Availability of information.* Upon written request, the Director shall make information that bears on the substance of the protest available to any interested party except where the information is proprietary, confidential, and exempt from disclosure or otherwise submitted or required to be withheld by law or regulation.
- (4) *Decision on protest.* If a protest is properly filed, the director shall inform the protestor of the decision in writing within 15 business days, or if the director requires more than 15 business days, the director will advise the protestor within the initial ten days of the additional amount of time required to render a decision.
- (5) *Finality of decision.* A decision by the director is final and conclusive, unless fraudulent.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-115. - Informal purchase.

- (a) *General.* Procurements that involve amounts up to \$74,999.99 do not require a formal sealed bid or proposal process. However, the processes used for this type of procurement will include as much competition as is consistent with the anticipated cost of the procurement and the best interest of the county as determined by the director. In general, the department of central services staff shall obtain commodities, equipment and services competitively through written quotes where cost is up to \$74,999.99 with a minimum of three quotes required unless adequate source supply is not available.
- (b) *Prohibition of improper use of informal purchase processes.* Purchases may not be artificially divided as to constitute an informal purchase, thereby circumventing the dollar limit requirement for competitive sealed bids or proposals. Violations of this policy will be enforced pursuant to the Clayton County Civil Service Rules regarding improper use of county resources and the Clayton County Ethics Code regarding misuse of county assets.
- (c) *Procedures.* Procurement within this category shall be made in accordance with the informal purchase procedures established by the director. These procedures will cover purchases delegated to user departments as well as those handled through the department of central services.

Such operational procedures shall provide for obtaining adequate and reasonable competition for the commodities, equipment and services being purchased. Further, such operational procedures shall require the preparation and maintenance of written records to adequately document the competition obtained, properly account for the funds expended and facilitate audit and review of the transaction.

(d) *Informal purchase by user departments.*

- (1) *Authority.* Each user department, is granted authority to handle purchases where the cost is \$5,000.00 or less. Purchases shall not be artificially divided so as to circumvent the \$5,000 limit. Purchases within this category shall be made in accordance with the informal purchase procedures established by the director. The user department shall conduct such competition as is practicable under the circumstances, including but not limited to verbal and/or written quotes from three or more suppliers, and such purchases must be approved in writing by the department director prior to purchase. Each department director shall keep written documentation of quotations and receipts for each purchase in separate files for auditing purposes; failure to maintain such documentation and produce such documentation upon request may result in loss of this purchasing authority at the director's discretion.
- (2) *Purchase cards.* Pursuant to O.C.G.A. § 36-80-24, the county authorizes the use of purchase cards to be used in conjunction with certain informal purchases. A purchasing card may only be used for services and supplies not to exceed \$5,000.00 and for purchases specifically benefitting the county. Purchases shall not be artificially divided so as to circumvent the \$5,000.00 limit. Neither shall this process be used for frequently recurring acquisitions that warrant volume purchases or periodic term contracts. It shall be unlawful to use a purchasing card to make a purchase unauthorized by this section or otherwise unrelated to official Clayton County business. Any person who violates this subsection shall be personally liable to Clayton County for the amount of the purchase and will be prosecuted to the fullest extent of the law. Failure to comply

with the provisions of this subsection shall be grounds for disciplinary action up to and including termination and the loss of purchasing card privileges.

- a. The department of finance and the department of central services are authorized to promulgate policies associated with the use of purchasing cards to be used in conjunction with this subsection of the Purchasing Code. The chief financial officer may provide purchasing cards to select departments of Clayton County. Each purchasing card is issued in the name of the department head who shall:
 1. ensure that the use of each card is accounted for on forms provided by the department of finance;
 2. ensure that each card is secured when not in use;
 3. designate which designees, if any, are authorized to use the purchasing card;
 4. ensure that the monthly billing statement for each card is reconciled and submitted with corresponding receipts to the department of finance in a timely manner;
 5. ensure that any billing discrepancies are resolved with the supplier;
 6. document any unauthorized use of a purchasing card and report the same to the department of finance;
 7. document any supplier disputes related to the purchasing card and report the same to the director on at least a monthly basis; and
 8. notify the director immediately upon learning that a card is lost or stolen.
- b. When a user department receives a monthly billing statement for purchases made on the purchasing card, the department head or his designee shall:
 1. verify the accuracy of the monthly billing statement by comparing each purchase with the corresponding receipt;
 2. complete and sign a submission statement and affidavit on forms provided by the department of finance; and
 3. submit the reconciled monthly billing statement, corresponding receipts, and submission statement to the director within five business days of the date the monthly billing statement was received by the user department.
- c. Any purchaser who fails to produce a required receipt shall provide a written explanation to the director and/or the chief financial officer. The explanation shall include, at a minimum, a description of the items purchased, the name of the supplier, the reason for the purchaser's failure to produce the receipt, and the efforts the purchaser made to produce a receipt. Failure to provide an adequate explanation may result in the purchaser being held personally liable to Clayton County for the amount of the purchase in addition to any other penalties authorized by this section.
- d. Additional criteria for the use and structure of the purchasing card program may be prepared from time to time by the chief financial officer. The purchase card procedure shall be audited two times per year by the Clayton County Internal Audit Department, an independent auditing agency, or other investigative body.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-116. - Sole source purchase.

Based upon evidence that a particular commodity, equipment or service may only be obtained from one source and no similar commodity, equipment or service is available from a different source that will adequately meet the county's requirements and specifications, the director may decide that the commodity, equipment or service be purchased as a sole source based upon supporting documentation from the requesting user department and potential supplier. All sole source purchases must be authorized by the director. The supplier, department director and the director must certify in writing that the particular commodity or service is only available from one supplier. All evidence and certifications shall be kept on file by the department of central services. The board of commissioners shall approve all purchases where cost is in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-117. - Special purchase.

Notwithstanding any other provision of this Purchasing Code, the director may initiate a purchase where he/she determines that an unusual or unique situation exists that make the application of all requirements of competitive sealed bidding or competitive sealed proposals contrary to the public interest and the interest of the county and such purchase does not technically qualify as a sole source purchase under section 4-305 of this Purchasing Code. If determined as appropriate by the director, any special purchase under this section shall be made with such competition as is practicable under the circumstances; provided however, that the director may determine under appropriate circumstances that there is only one logical choice as to a contractor to provide the goods or services necessitated by the special purchase. A written determination of the basis for the purchase and for the selection of the particular contractor shall be included by the director in the contract file. The user department and the director must certify in writing the basis for designating such purchases as a special purchase with thorough reasoning. All awards under this section for amounts where cost is in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99 shall be approved by the board of commissioners.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-118. - Emergency purchase.

The director shall have the authority to purchase commodities, equipment and services where there exists an emergency constituting a threat to the health, welfare or safety of people or to the soundness and integrity of public property or to the delivery of essential services and where the adverse effects of such emergency may worsen materially with the passage of time. The emergency purchase process is reserved for rare and extreme circumstances. Therefore, rarely will the emergency purchase process be utilized.

Acquisitions shall be made using such competitive procedures as circumstances reasonably permit. Written documentation shall be prepared by the department director and submitted to the department of central services explaining the nature of the emergency. All emergency purchases must be authorized by the director or his/her designee with direct authorization by the Director per emergency purchase. All emergencies where cost is in excess of \$74,999.99 shall require ratification by the board of commissioners at the next available board of commissioners meeting.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-119. - Cooperative purchase.

The county may participate in a cooperative purchase for commodities, equipment and services when determined by the director that it is in the best interest of the county. The sponsoring entity, whether federal, state or local must have performed a competitive procurement process and entered into a contract that stipulates allowance for other governmental entities to purchase the same commodity, equipment or service from the supplier at the same price and under the same terms and conditions as extended to sponsoring entity. If such arrangement has not been made a part of the contract, written permission from the sponsoring entity and the awarded supplier must be obtained. The director or his/her designee must certify that the acquisition of the commodities, equipment or services are consistent with the contract commodities, equipment and services, and of equal or lesser price, of those commodities, equipment and services offered to the sponsoring entity. Documentation to substantiate this decision will be maintained by the department of central services.

Cooperative purchases where cost is in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99 shall be approved by the board of commissioners.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-120. - Governmental and affiliated entity purchase.

The county may purchase services and incidental commodities from other federal and state or local governments when determined to be in the best interest of the county. Documentation to substantiate this decision will be maintained by the department of central services.

Such purchases where cost is in excess of \$74,999.99 or is expected to generate revenue greater than \$74,999.99 shall be approved by the board of commissioners.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-121. - Clayton County first initiative—Local vendor preference.

- (a) *Purpose.* There is established in Clayton County, a local vendor preference. The county has a significant interest in encouraging the creation of employment opportunities for its residents and for businesses located within the county. As a purchaser of goods and services, the county will benefit from expanded job and business opportunities for its residents and businesses through additional revenues generated by its activities. It is in the interest of the county and its residents to give preference to vendors who have direct physical and economic relationships with the county. More specifically, bids or proposals awarded to local vendors contribute to the local tax base and local vendors will therefore be given special consideration when bidding against vendors outside of the geographic boundaries of Clayton County.
- (b) *Preference.* Except as may otherwise be required by applicable state or federal law, in the contracting for goods and services of all kinds and descriptions, when such goods or services are to be obtained, whether through bids or proposals, bids or proposals received from local vendors will be given preference if such bid or proposal is responsive and within five percent of the low bid submitted by any out-of-county bidder. In such instance, the local vendor will be given the opportunity to match the low bid offered by the out-of-county vendor. If such local vendor agrees to match the lowest bid received from the out-of-county vendor within the time specified by the county, the bid shall be awarded to the local vendor.
- (c) *Local vendor eligibility.* A local vendor shall only be eligible to receive the benefit of this preference if it meets each of the following requirements, as verified by the central Services Department, prior to any award of a contract or purchase:
 - (1) The business or supplier must operate and maintain a staffed, fixed, physical place of business within Clayton County, and must have held a valid business license from Clayton County or a city located within Clayton County for at least one year prior to the date of the submission of its proposal or bid, as applicable; and
 - (2) The business or supplier must provide a copy of a current business license and/or occupational tax certificate; and
 - (3) The business or supplier must have paid all real and personal taxes owed to Clayton County; and
 - (4) The business or supplier must certify its compliance with the Georgia Security and Immigration Act; and
 - (5) The business or supplier must certify is compliance with the Georgia Secretary of States registration requirements.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 4. - PROFESSIONAL SERVICES

Sec. 2-122. - Definition.

"Professional services" refer to services that require specialized knowledge and training often through long and intensive academic preparation, or in-depth experience in a particular field or discipline. Professional services generally consist, in material part, of advice, evaluation, consultation, training, planning, design, obtaining information/direct assistance, or other effort involving the exercise of judgment, discretion, and knowledge, including, without limitation, a service provided by a person whose profession is licensed or regulated by the state or federal government and other related agencies.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-123. - Conditions for use.

Professional services shall be procured through the department of central services. Pursuant to section 4-103 of this Purchasing Code professional services do not require a competitive procurement process. However, a competitive process for procurement of professional services shall be used whenever feasible. The director, upon the request or recommendation of the user department, shall in his/her discretion procure professional services in accordance with the provisions of this Purchasing Code.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-124. - General.

It is the policy of this county to award contracts for professional services on the basis of demonstrated competence and qualifications at a fair and reasonable price with ultimate selection based on the best interest of the county and receipt of maximum value.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-125. - Responsibility for process.

The department of central services will have primary responsibility for establishing specifications and requirements and evaluation of professional services proposals. The user departments and the department of central services are responsible for maintaining documentation for the professional service. Prior to the termination or expiration of a professional services contract, the user department and the department of central services have a continuing obligation to review and reevaluate the professional service contract to determine whether continued service is necessary. Any agent or firm employed to provide a service to the county shall be required to adhere to the requirements of this Purchasing Code.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-126. - Legal services.

All legal services that are for the purpose of advising the county law department or for litigation against the county will be procured by the chief staff attorney.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 5. - CONSTRUCTION ACQUISITION

Sec. 2-127. - Applicability.

Public works construction projects with costs exceeding \$100,000.00 must be procured pursuant to the Georgia Local Government Public Works Construction Law, O.C.G.A. §§ 36-91-1 through 36-91-95. Public works construction projects with costs up to \$100,000.00 shall be procured by competitive sealed bidding or competitive sealed proposals presented in section 2-113 and section 2-114, respectively.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-128. - Delegations of authority.

The director is hereby delegated the authority to administer a process for mandatory pre-qualification of prospective bidders for public works construction contracts pursuant to O.C.G.A. § 36-91-20(f). The director shall have the authority to establish procedures for utilizing the various construction delivery methods that will best serve the county's interests. These procedures may include but are not limited to establishing a process for mandatory pre-qualification of contractors. The director shall also have the authority to determine the construction delivery method to be utilized in awarding a given public works contract. All public works construction contracts are subject to the requirements of O.C.G.A. § 36-91 that: (1) place the bidder or offeror at risk for construction; and (2) require labor or building materials in the execution of the contract be awarded on the basis of competitive sealed bidding or competitive sealed proposals presented in section 2-113 and section 2-114, respectively

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-129. - Public notice.

Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an internet website of the governmental entity or an internet website identified by the governmental entity.

- (1) Contract opportunities advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.

- (2) Contract opportunities that are advertised solely on the Internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

Contract plans and specifications shall be available on the first day of the advertisement and shall be open to inspection by the public. The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done. All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of O.C.G.A. § 36-91-22.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-130. - Discretionary requirements.

The county shall require bid, performance, and/or payment bonds for any construction contract where costs exceed or are estimated to exceed \$100,000.00. Nothing in this subsection prevents the requirement of such bonds on construction contracts under \$100,000.00 when the circumstances warrant. The department of central services, risk management division shall set specific requirements and policies pursuant to O.C.G.A. §§ 36-91-40 through 36-91-95.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-131. - Approval of public works construction contracts.

All public works construction contracts subject to the requirements of the Georgia Local Government Public Works Construction Law entered into with private persons or entities shall be in writing, on file, and available for public inspection at a place designated by the director.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 6. - CONTRACTING REQUIREMENTS

Sec. 2-132. - Bonding requirements.

(a) *Bid bonds.* When the county requires bonding, any bid submitted shall be given a good, faithful, and sufficient surety or sureties approved by the county. Such bid bond shall secure the faithful acceptance by the bidder or proposer of a bid or proposal award and shall be issued for the protection of the county. The bid bond shall be in an amount as specified in the bid or proposal but in no case shall it be less than five percent of the contract price. Bonds shall be of a forfeiture type. All sureties should be licensed to do business in the State of Georgia, must have the ratings established by the department of central services and be listed in the department of treasury's publication of companies holding certificates of authority as acceptable reinsuring companies. In lieu of the bid bond described above, a bidder or proposer may submit with the bid or proposal a cashier's check payable to the county in an amount as specified in the bid or proposal but in no case shall it be less than five percent of the contract price. To the extent permitted by Georgia law, a guaranteed irrevocable letter of credit in the proper amount will act as a bid bond, provided that the form of such letter of credit and the lending institution have been approved by the department of central services in advance.

(b) *Performance and payment bond.*

- (1) Any required performance bond shall be issued with good and sufficient surety or sureties approved by the county, in favor of the county and in at least the amount of the total purchase price or as specified in the solicitation and payable under the bid or proposal and shall be increased as the contract amount increases. Such performance bond shall be conditioned upon the bidder's faithful performance of the terms of the bid or proposal and the contract executed in connection therewith. All sureties should be licensed to do business in the State of Georgia, must have the ratings established by the department of central services and be listed in the department of treasury's publication of companies holding certificates of authority as acceptable surety on federal bonds and as acceptable reinsuring companies.
- (2) Any required payment bond shall be issued with good and sufficient surety or sureties approved by the county, in favor of the county and in at least the amount of the total purchase price or as specified in the solicitation and payable under the bid or proposal and shall be increased as the contract amount increases. Such payment bond shall be for the benefit of all persons supplying labor, materials, machinery and equipment in the prosecution of the work to be done under the bid or proposal. All sureties should be licensed to do business in the State of Georgia, must have

the ratings established by the department of finance and be listed in the department of treasury's publication of companies holding certificates of authority as acceptable surety on federal bonds and as acceptable reinsuring companies.

- (c) *Insurance requirements.* The risk management division shall determine what types and amounts of insurance coverage are reasonably necessary for the protection of the county's interests for all acquisitions covered by this Purchasing Code. All sureties must be licensed to do business in the State of Georgia and have the ratings established by the department of finance. The risk management division shall review the insurance requirement and have the authority to waive or modify any requirements regarding insurance.
- (d) *Employment of unauthorized aliens prohibited.* It is the policy of Clayton County that unauthorized aliens shall not be employed to perform work on County contracts involving the physical performance of services. Therefore, the county shall not enter into a contract for the physical performance of services within the State of Georgia unless the contractor shall provide evidence on county-provided forms that it and its subcontractors have registered for and are participating in the federal work authorization program as defined by O.C.G.A. § 13-10-91 et seq. to verify information of all newly hired employees.

A contractor's failure to participate in the federal work authorization program as defined by O.C.G.A. § 13-10-90 et seq. may be sanctioned by termination of the contract and any other active contracts between the contractor and the County. If it is determined that a subcontractor is not participating in the federal work authorization program as defined by O.C.G.A. § 13-10-90 et seq., Clayton County may direct the contractor to terminate that subcontractor. A contractor's failure to follow Clayton County's instruction to terminate a subcontractor that is not participating in the federal work authorization program as defined by O.C.G.A. § 13-10-90 et seq. may be sanctioned by termination of the contract and any other active contract between the contractor and the County.

The above requirements shall be in addition to the requirements of state and federal law, and shall be construed to be in conformity with those laws.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-133. - Responsibility of bidders.

- (a) *Determination of non-responsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found to be non-responsible, a written determination of non-responsibility shall be prepared by the director. A copy of the determination shall be made part of the contract and supplier performance files.
- (b) *Supplier performance rating.* The director is authorized to establish a supplier performance rating system for use in eliminating those suppliers who fail to perform or perform unsatisfactorily. Rating system may be used for evaluation and award of bids and contracts.
- (c) *Penalties for non-performance.* The director shall establish penalties for nonperformance for delivery failures or default under the contract.
- (d) *Ineligible source list.*
 - (1) *Establishment of list.* The following person shall be placed on an ineligible source list pursuant to the provisions of this section for a reasonable period not to exceed three years based upon the determination of the director:
 - a. Any person who submits a bid or proposal in bad faith;
 - b. Any person who willfully or repeatedly breaches a contract with the County;
 - c. Any person who repeatedly refuses to accept a bid or proposal award;
 - d. Any person who has established a pattern or practice of unethical or immoral business practices;
 - e. Any person who has been convicted of a crime involving moral turpitude;
 - f. Any person who is owned, controlled or managed, in whole or in part, by any other person described in (a) through (e) above; and
 - g. Any person who establishes a pattern of employing unauthorized aliens in violation of section 2-132(d) above.

- h. Any person who has a pending lawsuit against the county or has filed a lawsuit against the county within the previous three years concerning a dispute with the county, its officials or employees related to the provision of goods, commodities, services, or construction by that person. This does not include tax appeals, or lawsuits or claims filed pursuant to O.C.G.A. § 45-1-4;
- i. Any person who is the subject of a claim or lawsuit filed by the county concerning goods, commodities, equipment, services or construction provided by that person;
- j. Any person who does not comply with the small local business and Procurement Nondiscrimination Program; or
- k. Any person the director determines failed to comply with the ethical requirements of section 4-97, specifically section 4-97(i), above.

Any such person shall not be eligible to provide any commodities, equipment or services to the county during the period such person remains on the ineligible source list.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-134. - Collusive or anti-competitive practices.

Each bidder shall certify in writing that such bidder has not engaged in any collusive or anti-competitive practices in responding to a solicitation for bids or proposals.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-135. - Approval of contracts.

- (a) *General provisions.* All contracts shall be reviewed and approved as to form by the law department prior to execution on behalf of the county. A contract shall conform to state and federal law and to county ordinances and shall otherwise contain such provisions as are reasonably necessary to protect the interests of the county.
- (b) *Chief operating officer authority.* The chief operating officer or his/her designee shall have the authority to sign all formal, written contracts up to \$74,999.99. Those contracts in excess of \$74,999.99 shall be signed after adoption and approval of the purchase by official action of the board of commissioners.
- (c) *Director of central services authority.* The director of central services or his/her designee shall have the authority to sign contracts up to \$50,000.00.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-136. - Change orders and contract modifications.

- (a) *General provisions.* Except as hereinafter provided, any change order or other modification of a contract term shall be approved by the board of commissioners.
- (b) *Chief operating officer authority.* The chief operating officer or his/her designee shall have authority to approve all change orders to purchase orders and contracts up to an absolute value of 20 percent of the original contract, provided the total change order amount is less than \$74,999.99. If the original contract or purchase order price did not exceed \$74,999.99, but the change order will make the total price of the contract exceed \$74,999.99, then the change order requires approval by official action of the board of commissioners. Change orders to contracts that did not require official action of the board of commissioners upon the original execution thereof and which amend the scope of work, term, time and/or total cost not exceeding \$74,999.99 may be approved by the chief operating officer or his/her designee in the same manner as the original contract.
- (c) *Director of central services authority.* The director of central services and/or his/her designee shall have authority to approve all change orders to purchase orders and contracts up to an absolute value of \$50,000.00. If the original contract or purchase order price did not exceed \$50,000.00, but the change order will make the total price of the contract exceed \$50,000.00, then the change order requires either approval by the chief operating officer for purchases up to \$74,999.99 or official action of the board of commissioners for purchases that exceed 74,999.99. Change orders to contracts that did not require approval of the chief operating officer or official action of the board of commissioners upon the original execution thereof and which amend the scope of work, term, time and/or total cost

not exceeding \$50,000.00 may be approved by the director or his/his designee in the same manner as the original contract.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-137. - Emergency circumstances for change orders.

Emergency change orders should follow the general procedures for emergency purchases set forth in section 2-118. Where an emergency circumstance exists which will not permit delay of a project, the user department director shall notify the director and the chief operating officer before proceeding to authorize work pursuant to an emergency change order. If the emergency change order requires approval by the board of commissioners, the emergency change order must be ratified by official action of the board of commissioners at the next board of commissioners' meeting and the reason for the emergency must be contained in the minutes of the meeting. If work has not been satisfactorily completed by the scheduled meeting, then the board of commissioners must be informed and ratification scheduled at the earliest possible time.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-138. - Specifications.

All specifications shall be prepared by the user department so as to promote overall economy for the purposes intended and encourage competition in satisfying the county's needs and shall not be overly restrictive. All specifications must be approved by the department of central services. This policy applies to all specifications including but not limited to those prepared for the county by architects, engineers, designers, draftsmen, and third party service providers.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-139. - Types and use of specifications.

The director is authorized to establish procedures for the applicability and appropriate use of qualified products lists, brand name or equal specifications and brand name specifications.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-140. - Renewals and extensions.

- (a) *General provisions.* Some contracts contain renewal clauses describing the conditions under which it may be renewed. The user department(s) must certify in writing to the department of central services that the contractor(s) has performed satisfactorily and met all of the requirements set forth in the original award. Renewals will be executed in the directors discretion.
- (b) *Approval authority.* The director shall approve renewals of existing contracts that provide renewal provisions with no need for additional funding. The board of commissioners hereby delegates to the director or his/her designee the right to approve amendments that serve only to extend the time to complete the contract with no need for additional funding.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-141. - Termination of contracts.

Upon recommendation by the user department(s), the director shall have the authority to cancel a contract for any reason to include but not limited to cause, convenience, and lack of appropriation of funds; and shall process the cancellation pursuant to the contract terms and conditions. The termination of a contract that was originally approved by the board of commissioners, shall be approved by the board of commissioners.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 7. - GRANTS

Sec. 2-142. - Grants.

A competitive process for the expenditure of grant funds shall be used whenever feasible in accordance with this Purchasing Code.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-143. - Mandatory prequalification process.

The director is authorized to determine if a process for mandatory pre-qualification for expenditure of grant funds is appropriate, subject to these requirements:

- (1) criteria for pre-qualification shall be reasonably related to the project or the quality of the work;
- (2) criteria for pre-qualification shall be available to any prospective person requesting such information;
- (3) there shall be a method of notifying prospective persons of the criteria for pre-qualification; and
- (4) there shall be a procedure for a disqualified person to respond to his or her disqualification to the director; however, such procedure shall not include a formal appeal.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-144. - Grant services.

Grant funds are not necessary to conduct a procurement of grant services. The department of central services is authorized to issue requests for bids or proposals for commodities, equipment or services that will be paid for with grant funds prior to final receipt of grant funding. Such requests for bids or proposals should clearly state the contract is dependent on the availability of grant funds.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 8. - SMALL LOCAL BUSINESS AND PROCUREMENT NONDISCRIMINATION PROGRAM

Sec. 2-145. - Short title.

This program shall be known as the "Clayton County Small Local Business and Procurement Nondiscrimination Program."

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-146. - Policy and objectives.

- (a) *Policy statement.* It is the policy of the Clayton County Government to promote full and equal business opportunities for all persons doing business with the county by increasing the purchase of goods and services from minority and women owned businesses within the area of the county government. It is further the policy of the county government that firms seeking to participate in contracting and procurement activities with the county are not prevented from doing so on the basis of the race or gender of their owners and that the county government not be a passive participant in any private scheme of discrimination.
- (b) *Promotion of equal opportunity.* The county government strictly prohibits discrimination against businesses based on the race, color, national origin, or gender of their owners or employees in the conduct of any county government affairs. No person shall be denied the benefit of, or otherwise discriminated against, on the grounds of race, color, national origin or gender in connection with the award or performance of any contract paid for, in whole or in part, with funds of the county government.
- (c) *Program objectives.* The objective of the small local business and procurement nondiscrimination program ("the program") is to promote and encourage full and open competition in all county government procurement and purchasing; encourage all the county government personnel involved in procurement and contracting activities to utilize appropriate purchasing procedures; to prevent the county government from becoming a passive participant in any unlawful discrimination; to spur economic development in the public and private sectors of the local economy; to create growth in the county business community; increase the capacity of local small businesses; and, to rectify that participation in such unlawful discrimination.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-147. - Definitions.

For the purpose of this division, the following words, terms, phrases and abbreviations shall have the following meanings:

African American means persons having origins in any black racial group of Africa. It includes people who indicate their race as "Black, African Am., or Negro," or provide written entries such as African American, Afro American, Kenyan, Nigerian, or Haitian.

African American owned business enterprise (AABE) means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and that is owned and controlled by one or more African Americans.

Asian means persons having origins in any of the original people of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Asian business enterprise (ABE) means a business which is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more Asian individuals.

Availability means being "qualified" to perform work for the county government. This means that the bidder does business within an industry group from which agencies of the county government make certain purchases; the firm's owner has demonstrated the belief that the firm is qualified and able to perform the work; the firm is located within the relevant geographical area such that it can do business with agencies of the county government; and the bidder has demonstrated an interest in obtaining work by filling out a vendor application, has bid, or is going through the certification process.

Bid means a quotation, proposal, sealed bid or offer to perform or provide labor, materials, supplies or services to the county government for a price.

Bidder means any individual, sole proprietorship, partnership, joint venture, or corporation that submits a bid to the county government.

Benchmarking means the method enabling the county government to track the inclusion of MWBEs in the procurement process. Benchmarks are not quotas or goals, rather, they are percentage ranges based on MWBE availability, current MWBE participation, and previous MWBE participation in the county area. The Benchmarking will be developed by the contract compliance manager and the contracts administrator and approved by the Director of Central Services.

Brokerage: "Brokerage" or "broker" shall mean a person or firm which contracts with third parties on behalf of the broker's principal or specialist who represents buyers of goods, without taking possession or ownership of these goods or an agent employed to make bargains and contracts for compensation. A broker acts as middleman in transactions between a buyer and a seller, generally receiving a commission or fee for work performed. An independent manufacturer's representative or a distributor is not a broker.

Certification means the qualifying process that assures buyers and local, state, and federal agencies that a particular business is an MWBE and/or SLBE, either inside or outside the county that perform a commercially useful function. Certification or recertification shall mean official recognition and approval by the county government that a business meets the qualification criteria of an MWBE, SLBE inside the county, or SLBE outside the county, as set forth in this program. Certification or recertification relates to qualifications regarding ownership and control, not the quality of the service or product.

Clayton County Government means the Government of Clayton County, Georgia, including any of its operating elements, officers, and/or employees acting with authority.

Clayton County Disparity Study means the disparity study prepared by Mason Tillman Oct. 2011.

Commercially useful function means performance or provision of real and actual services by a participant under a contract with the county government or under a subcontract with another business enterprise under a contract with the county government. In determining whether a business is performing a commercially useful function, the following non-exclusive factors will be considered:

- (1) The nature and amount of work contracted;
- (2) Whether the SLBE has the skill and expertise to perform work for which it has been certified;
- (3) Whether the SLBE actually performs, manages and supervises the work;
- (4) Whether the SLBE intends to purchase commodities and/or services from a non-SLBE and simply resell same to the general or prime contractor for the purpose of allowing those commodities and/or services to be counted towards assessment of a Benchmark or fulfillment of a goal (if implemented);
- (5) Standard industry practices relating to the use of subcontractors. Consistent with standard industry practices, a SLBE subcontractor may enter into second tier subcontracts provided that no more than twenty-five percent of the work thereunder will be performed by a non-SLBE unless the subcontractor demonstrates to the satisfaction of the county government that the subcontracting arrangement is consistent with standard industry practice.

Compliance means the condition existing when a participant has met the requirements of this program.

Contract means a contract in excess of \$1,000.00.

Control or controlled: For the purpose of determining whether the owner or owners of a potential SLBE controls the potential SLBE, the county government shall consider all of the facts in the record viewed as a whole, including, without limitation the following:

- (1) Whether the potential SLBE is an independent business, which means that its commercial viability does not depend on another firm or firms.
- (2) Whether the potential SLBE is subject to any formal or informal restrictions that limit the customary discretion of the SLBE owner. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices that prevent the owner of the potential SLBE from making any business decision without the cooperation of another individual. This paragraph does not preclude spousal co-signature on documents.
- (3) Whether the owner of the potential SLBE possesses the power to direct or cause the direction of the management and policies of the business enterprise and to make the day-to-day as well as long term decisions on matters of management, policy and operations.
- (4) Whether the owner of the potential SLBE has an understanding of, and managerial and technical competence directly related to, the type of business in which the business enterprise is engaged and the business enterprises' operations. Generally, experience limited to office management, administration, or bookkeeping functions, unrelated to the principal business activities of the business enterprise is insufficient to demonstrate control.
- (5) Whether, if a state or local law requires the owner of a particular type of firm to have a particular license or other credential, the owner of the potential SLBE possesses the required license or credential.

Covenant of non-discrimination means, collectively, one or more contractual affirmative promises:

- (1) To adopt the policies of the county government relating to the participation of SLBEs in the procurement process;
- (2) To undertake certain good faith efforts to solicit SLBE participation; and
- (3) Not to otherwise engage in discriminatory conduct against SLBEs.

Eligible individuals means individuals who qualify as an MWBE or meet the criteria to be an SLBE

First ranked bidder means an individual, sole proprietorship, partnership, joint venture, or corporation that has submitted a bid that, subject to review as contemplated in this chapter, has been tentatively determined pursuant to the requirements of this title to be the lowest cost bid or highest ranked proposal.

Goal means race/gender-conscious corrective measures.

Good faith efforts means the voluntary actions of a participant undertaken in good faith to ensure that it does not discriminate in its contracting practices.

Hispanic American means people who identify with the terms "Hispanic" or "Latino" and who classify themselves in a specific Hispanic or Latino category such as "Mexican," "Puerto Rican," "Cuban," or "other Spanish, Hispanic, or Latino."

Hispanic American owned business enterprise means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and that is owned and controlled by one or more Hispanic American.

Independent ownership and control means the degree to which businesses own and participate in the management of the partnership, corporation or joint venture, by considering the SLBE or MWBEs participation in the decisions affecting the day-to-day operations of the business, by considering the ability of the SLBEs and MWBEs to function and carry out daily business activities without assistance from the majority partner other than in ways specified in the partnership or corporation papers, and by considering the business' proportionate interest in the capital, assets, profits and losses of the business. In determining whether a partnership or corporation is at least 51 percent independently owned and controlled by eligible individuals and in determining whether such SLBEs have at least 51 percent independent ownership and control, the Director of Central Services may use discretion in weighing the foregoing factors, as well as any other factor, which in the county's opinion affects independent ownership and control.

Joint venture means a combination of two or more persons, firms or corporations who, without any partnership or corporate designation, join to carry out a single business project or undertaking which is limited in scope and duration. Under this chapter, SLBEs shall be allowed to joint venture only with other SLBEs. The certification of a joint venture will terminate upon completion of the county contract for which the joint venture was formed

Locally based inside the county means a business located and operating in Clayton County, Georgia.

- (1) For the purposes of this definition, to be "located" in the county means to have a physical presence within the geographic boundaries of the county such as having office space, a plant, warehouse, or other physical business facility, but specifically excluding the existence of a post office box or virtual office without any other physical presence, for at least one year prior to submitting an application for local small business certification.
- (2) For the purposes of this definition, to "operate" in the county means to be the current holder of a valid business license issued by the county at least one year prior to submitting an application for local small business certification.

Locally based outside the county shall mean a business located and operating outside the geographical boundaries of Clayton County, Georgia but operating inside the counties that are contiguous to the county, specifically the counties of DeKalb, Fayette, Fulton, Henry and Spalding.

- (1) For the purposes of this definition, to be "located" in the MSA means to have a physical presence within the geographic boundaries of the counties within the MSA, but outside of the county such as having office space, a plant, warehouse, or other physical business facility, but specifically excluding the existence of a post office box without any other physical presence for at least one year prior to submitting an application for local small business certification.
- (2) For the purposes of this definition, to "operate" in the MSA means to be the current holder of a valid business license issued by a local government within the MSA for at least one year prior to submitting an application for local small business certification.

Minority or women owned business enterprise ("MWBE") refers to a business enterprise maintaining a significant business presence in the MSA and performing a commercially useful function that is owned by one or more of the following:

- (1) African Americans;
- (2) Native Americans;
- (3) Hispanic Americans;
- (4) Asian Americans; and
- (5) Women.

Racial and gender categories are separated for monitoring and tracking purposes only.

MSA: (Atlanta) Metropolitan statistical area.

MWBE owned means that African American, Native American, Hispanic American, Asian American or woman owner(s) who are citizens or permanent residents of the United States individually or collectively possess an ownership interest of at least 51 percent of the business.

Native American means persons having origins in any of the original people of North America, including American Indians, Eskimos and Aleuts.

Native American owned business enterprise (NABE) means a business that is an independent and continuing enterprise for profit, performing a commercially useful function and which is owned and controlled by one or more Native Americans.

Non-compliance means the condition existing when a participant has failed to meet the requirements of this program.

National Institute of Governmental Purchasing Code (hereinafter referred to as "NIGP Code"): Shall be used to identify the work category of any firm registering to do business with the county and such NIGP Code shall be required to be included in all data or other systems that reference a firm, including bid submissions, subcontractor solicitations, contract awards, and payment systems.

Notice means written communication delivered to the recipient by hand, including express delivery, electronically or by certified mail.

Participant means an individual or entity that enters into a contract with the county government to provide goods or services within the scope of the program, or a subcontractor or supplier to such an individual or entity.

Program means the procurement nondiscrimination program.

Purchasing agent shall have the meaning given in section 4-202 of this chapter.

Purchasing sector means the NIGP Code category for the specific procurement of construction, non-professional services and professional services.

Race/gender-conscious means any governmental or legislative policy or programmatic action that uses race or gender as criteria for participation.

Race/gender-neutral means any governmental or legislative policy or a programmatic action in which race or gender is not among the criteria for participation.

Satisfactorily completed or satisfactory completion means all of the tasks called for in a contract or subcontract have been accomplished and documented as required by the county government.

Significant business presence means that a business enterprise with an established place of business in the MSA at which one or more of its employees is regularly based and that such place of business has a substantial role in the business' performance of a commercially useful function as herein defined. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not constitute a significant business presence.

Small local business enterprise (hereinafter referred to as "SLBE") shall mean a locally based small business operating inside or outside of the county, which meets the criteria outlined in subsection 2-149(f) of this division.

Supplier means a warehouser or manufacturer of materials, supplies or equipment that contracts directly with a bidder to provide such materials, supplies or equipment on a project that involves a trade or service. For purposes of measuring the total contract dollars awarded or paid to suppliers on projects, only amounts paid to suppliers of goods customarily and ordinarily used based upon standard industry or trade practices shall be counted.

Underutilization means the percentage of dollars spent by the county government with MWBE's is less than participation of MWBE's than reasonably expected based on the availability of MWBE's within the MSA.

Women business enterprise (WBE) means a business that is an independent and continuing enterprise for profit, performing a commercially useful function, and which is owned and controlled by one or more women.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-148. - Central services/contract compliance division.

A small local business and procurement non-discrimination section is created and shall be designated as the contract compliance division ("CCD"). The CCD will report directly to the Director of Central Services.

- (a) *Creation.* There is hereby created a contract compliance division (CCD) for the county. The CCD shall consist of a contract compliance manager, a contract compliance specialist and such subordinate personnel as may be provided from time to time by the Board of Commissioners. Until such time as CCD has been fully staffed, the Board of Commissioners has appointed a consultant to set up and perform the duties of the CCD and assist the county in setting up and monitoring the capture and administration of data as needed under this division. Such consultant may continue to perform certain duties of the CCD as directed by the Board of Commissioners or the purchasing agent, after the CCD is operational.
- (b) *Duties.* The CCD shall be primarily responsible for the administration and enforcement of the program. It shall encourage equal business opportunities to achieve the policies and objectives of the program by:
 - (1) Preparing written rules, regulations, and procedures consistent with the program for submission to and approval by the Director of Central Services.
 - (2) Publishing and making public said rules, regulations and procedures at least 30 days prior to their effective date.
 - (3) Verifying certification of MWBEs and SLBEs.
 - (4) Maintaining outreach and assistance programs to promote equal contracting opportunities for MWBEs and SLBEs that wish to do business with the county government.
 - (5) Maintaining a current database of certified and available MWBEs and SLBEs and making this database accessible to participants and other interested parties, that will include the NIGP Codes indicating the types of services provided by the business enterprise and contact information for the business enterprise. A list from the database will be made available to participants to assist them in their efforts to meet the benchmarks of the program. The list prepared from the database will specify which firms the county has determined to be certified in accordance with the county definitions for MWBEs and SLBEs.
 - (6) Monitoring utilization of MWBE and SLBE participation on projects for data gathering and informational purposes.
 - (7) In consultation with the contracts administrator, recommending reasonable SLBE benchmark ranges and goals to the Director of Central Services.

(8) Developing and supplying to each bidder as part of each bid solicitation forms for:

- a. The covenant of non-discrimination;
- b. Statement of successful subcontractors;
- c. Statement of interested subcontractors/vendors;
- d. Statement of bid proposals/price quotations; and
- e. Letter of intent to perform as a subcontractor/joint venturer.

The CCD shall revise these forms as necessary, consistent with the purpose and requirements of this section.

(9) Investigating written complaints as provided below.

(10) Notifying affected parties in writing of their right to review an adverse recommendation of the CCD.

(11) Preparing reports as requested by the Director of Central Services as well as semiannual and annual reports as required by subsections (c) and (d) below.

(12) Performing other tasks as may be required to fulfill the above-stated duties of the CCD.

- (c) *Authorization to monitor.* The CCD shall be authorized to collect from all participants such data and information as is necessary to monitor this program. This information may include information regarding business ownership, supplier information, subcontractor information, all of which shall reflect the race, ethnic origin, gender, and business location of the identified businesses. The CCD shall continuously monitor the participation of MWBEs and SLBEs in the procurement of construction, non-professional services and professional services for county government. Such monitoring shall include, without limitation, a statistical analysis of each construction trade, non-professional service and professional services to determine whether there is utilization of MWBEs in a manner that is proportionate to the identified availability range. The CCD will provide written reports to the Director of Central Services upon request but not less frequently than semiannually.
- (d) *Duty to report.* The CCD shall submit an annual report to the Director of Central Services regarding the effectiveness of the program. Such report shall include, without limitation, a summary of the purchases, contracts and subcontracts placed with MWBEs for the period and the relative percentage to the total of purchases and contracts for that period. The reports shall also emphasize quantity and quality of MWBE involvement by dollar volume. The report shall specify the race, national origin, gender, and NIGP Code with each category reported separately. Payments made to non-certified MWBEs shall be included as a separate set of figures for purposes of tabulating the total contract dollars going to MWBEs. The report shall include an analysis of the percentage for the reporting period of MWBE awards of the total awards for each MWBE category and purchasing sector and the percentage of availability of MWBEs in the MSA for each MWBE category and purchasing sector.
- (e) *Contractors' closeout activity reports.* In accordance with the rules and regulations for the program, prime contractors and prime consultants shall provide closeout activity reports to the CCD identifying activities of all subcontractors and sub-consultants in order to monitor MWBE and SLBE participation.
- (f) *Authority to investigate discriminatory practices.* Should a bidder or participant submit a written complaint of discrimination, the CCD is authorized to investigate the complaint. An investigation may be initiated based solely on a finding of a significant statistical disparity from the benchmark in the participant's utilization of MWBEs. Further, such investigations may be initiated when the CCD receives information that provides a reasonable basis to believe that an individual contractor seeking to contract or contracting with county government may be engaging in discriminatory conduct with relation to the bid process. The details of that investigation, including findings, shall be recorded and maintained by the CCD.
- (g) *Evaluation of compliance.* Pursuant to section 2-152.1 of this division, prior to issuing a notice of award the CCD shall review a bid when the contract administrator has reached an intent to award.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-149. - Small local business opportunity program.

(a) *Purpose.*

- (1) The purpose of the SLBE program of the county is to promote the economic welfare of the people of the county and to promote full and equal business opportunity for all persons doing business with the county by

providing assistance to SLBEs that would allow them to actively participate in the county's procurement process, and by working to eliminate discrimination in both public and private markets. The county seeks to determine whether eliminating discrimination against and assisting all small firms in a race and gender-neutral fashion will eliminate identified discrimination against MWBEs and eliminate the need for race and gender conscious actions.

- (2) The county, through the CCD and in accordance with this section, in its ongoing effort to evaluate the utilization of MWBEs to assure equal opportunity with regard to county procurement activities and assist in collecting data to determine whether a race-conscious initiative will be necessary to effectuate that objective, will monitor the progress of this program in that regard.
- (b) *Responsibilities.* Affected county offices shall be responsible for the performance of the following duties and obligations for purposes of implementing and achieving the policies and objectives of this program:

- (1) *Contract compliance division (CCD).* The contract compliance division shall collect and evaluate reporting data, which will be submitted to the Director of Central Services.

The contract compliance division is charged with the responsibility of investigating and coordinating administrative hearings to evaluate and address program protest matters.

- (2) *Reporting and compliance monitoring.* The CCD shall monitor and collect data concerning program activity within the respective departments to assure compliance.
- (3) *Rules and regulations.* The CCD shall issue and enforce rules and regulations for the small local business and procurement non-discrimination program authorized by this chapter.
- (4) *Small business assistance.*

Information. The CCD shall act as a resource for small business information.

Outreach. The CCD shall undertake to raise the consciousness of SLBE communities about county business opportunities and how to take advantage of the program benefits.

Certification. The CCD shall be responsible for certification, recertification, and decertification of SLBEs and MWBEs under this division.

Records and reports of contractors. Contractors shall submit reports in accordance with the provisions of this division.

Access to training—Technical assistance. The CCD shall act as a resource for technical assistance. The department shall collect, organize and disseminate information regarding available training resources in the county.

Access to capital—Financing. The CCD shall act as a resource for financial assistance. The department shall collect, organize and disseminate information regarding available capital or financing sources in the county economy.

Access to markets. The CCD will facilitate access to markets for SLBEs.

- (c) *County-maintained records and reports.*

- (1) The effectiveness of this program will be measured by a review of prime and subcontract utilization of all firms indicating awards made to SLBEs inside the county, SLBEs outside the county, and MWBEs. Program effectiveness measurements will also include efforts by the CCD to provide prime contracting opportunities for SLBEs. At the end of each contract, the CCD will prepare a report on the utilization of firms in the SLBE opportunity program as compared to all firms utilized by the county. Data in this report will include information on the gross income size of the firms participating on each contract with their NIGP Codes, race or ethnicity and gender status, and address, including county. Each project manager and procurement officer will continuously maintain, and compile monthly, information relating to the department's use of SLBE, including information regarding subcontractors and attainment toward the SLBE opportunity program participation goal.

Data on MWBE utilization will be used to determine if there are barriers to their participation that persists despite efforts to assist SLBEs.

- (2) At the end of a contract, the CCD shall require a contractor to report to the CCD the identity of each SLBE to whom the contractor has awarded a subcontract for the purchase of supplies, materials and equipment.

- (3) The CCD shall prepare a consolidated report based on a compilation and analysis of the reports submitted by each project manager and reports of payments provided by the finance department. This consolidated report will identify and assess SLBE and MWBE contract awards, prime contractors' progress in achieving SLBE subcontract goals, and other SLBE development and contracting efforts. Specifically, the CCD will maintain records showing:
 - a. Awards to SLBEs, including names of contractors and subcontractors, nature of the work/services performed, NIGP Codes, and the percentage of SLBE and MWBE participation per contract. The CCD will obtain regular reports from prime contractors on their progress in meeting contractual SLBE commitments;
 - b. Specific efforts to award contracts to SLBEs;
 - c. Copies of direct mailings to SLBEs;
 - d. Pre-bid conference information as it relates to SLBE program;
 - e. Requests for assistance from SLBEs interested in bidding/proposing on county contracts and subcontracts;
 - f. Workshops, seminars and training programs conducted for SLBEs and MWBEs;
 - g. Efforts to assist SLBEs in acquiring bonding and insurance.
- (4) The contract compliance division will submit quarterly SLBE development reports to the central services director. These reports shall include:
 - a. The number of contracts awarded to SLBEs and MWBEs;
 - b. A description of the general categories of contracts awarded to SLBEs and MWBEs;
 - c. The dollar value of contracts awarded to SLBEs and MWBEs;
 - d. The percentage of the dollar value of all contracts awarded to SLBEs and MWBEs during the preceding quarter; and
 - e. An indication of whether or not, and the extent to which, the percentage was a reasonable representation of SLBE and MWBE utilization for the region.
- (5) The MWBE information will be further disaggregated by the following minority group designations as defined supra:
 - a. African American
 - b. Hispanic American
 - c. Asian American
 - d. Native American
- (6) The county does not discriminate against any company or group of companies in its contracting and procurement activities on the basis of race, color, age, religion, sex, national origin, handicap/disability or veteran status. The SLBE program does not propose any numeric goals determined by the rate of participation of minorities or women, but will require that this information be reported. The program is designed to include all segments of the county's business community by increasing the competitiveness and profitability of all small businesses as defined within this program.
- (e) *Program Goals.* The contract compliance division will set contract goals for SLBEs on a contract by contract basis for each specific prime contract with subcontracting possibilities. Contract goals for SLBEs based inside the county may be set separately from contract goals set for SLBEs based outside the county.

SLBE participation is counted as follows:

- (1) Once a firm is determined to be an eligible SLBE, in accordance with this policy, the total dollar value of the contract awarded to the SLBE is counted toward the applicable SLBE goals.
- (2) The county or a contractor may count toward its SLBE goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and contractual commitment to the SLBE partner in the joint venture.
- (3) SLBE performance of a "commercially useful function" and SLBEs as contractors:
 - a. The county or a contractor may count toward its SLBE goal only expenditures to SLBEs that perform a "commercially useful function" in the work of a contract. An SLBE is considered to perform a "commercially useful function" when it is responsible for execution of a distinct element of the work of a

contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an SLBE is performing a commercially useful function, the county or a contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

- b. Consistent with normal industry practices, SLBEs may enter into subcontracts. If an SLBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SLBE shall be presumed not to be performing a commercially useful function. The SLBE may present evidence to rebut this presumption to the county.
- (4) The county or a contractor may count toward its SLBE goals 50 percent of its expenditures for materials and supplies obtained from SLBE regular dealers and 100 percent of such expenditures to a manufacturer, provided that the SLBE assumes the actual and contractual responsibility for the provision of the materials and supplies as follows:
- a. For purposes of this section, a manufacturer is a firm that operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.
 - b. The county or a contractor may count toward its SLBE goals the following expenditures to SLBE firms that are not manufacturers or regular dealers:
 - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by the county to be reasonable and not excessive as compared with fees customarily allowed for similar services.
 - 2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the materials and supplies, provided that the fee is determined by the county to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the county to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(f) *Eligible firms.*

- (1) *Requirements.* To be eligible for certification as a SLBE, each applicant must:
- a. Demonstrate that the firm's gross revenues or number of employees averaged over the past three years, inclusive of any affiliates as defined by 13 C.F.R. § 121.103, et al. does not exceed the size standards as defined pursuant to 13 C.F.R. §121.201 et al.;
 - b. Submit a certification of the net worth of each owner of the firm;
 - c. Demonstrate that the net worth of each owner does not exceed \$750,000.00, exclusive of principal residence and the value of the SLBE;
 - d. Provide information regarding the ethnicity and gender of its original owners;
 - e. Demonstrate that the firm is located or has an office in the county.
- (2) *Certification process.*
- a. A business seeking certification as a SLBE must submit an application to the county on the prescribed form, affirming under penalty of perjury that the business qualifies as a county SLBE.
 - b. If requested by the county, the applicant must provide any and all materials and information necessary to demonstrate active participation in the control, operation, and management of the business.
 - c. The county will certify the applicant as a SLBE or provide the applicant with written justification of denial of certification within 90 days after the date the county receives a satisfactorily completed application from the applicant.

- d. The county's staff will review and evaluate applications, and may reject an application based on one or more of the following:
 1. The applicant does not meet the requirements of the definition of a SLBE;
 2. The application is not satisfactorily completed;
 3. The application contains false information;
 4. The applicant does not provide required information in connection with the certification review conducted by the county;
 - e. The county may develop partnerships with government agencies and other organizations to identify appropriate businesses and assist these businesses in obtaining certification.
- (3) *Protests.* An applicant may protest the county's denial of its application for certification by filing a written protest with the county within 30 days after the date of the notice of the disposition to the applicant. The CCD will then prepare a recommendation for review by the contract compliance manager. The Director of Central Services will initiate an administrative investigation and conduct a hearing on the matter. All review decisions of the county are final.
- (4) *Recertification.*
- a. The certification is valid for a two-year period beginning on the date the county certified the applicant as a SLBE concern.
 - b. Upon expiration of the two-year period, a business that desires recertification must:
 1. Return a completed recertification form as provided by the county; and
 2. Comply with the requirements specified in this section that apply to the certification process.
- (5) *Revocation.* The county shall revoke the certification of a business if it is determined that a business does not meet the definition of a SLBE or that the business fails to provide requested information in connection with a certification review conducted by the county. Prior to taking formal action, the county staff shall provide the business with written notice of the proposed revocation. The CCD shall then prepare a recommendation regarding the proposed revocation for review by the central services director. The decision of the central services director is final.
- (6) *Certification reviews.*
- a. Clayton County will conduct random certification reviews of certified businesses by auditing them to verify that the information submitted by a business is accurate, and that the business remains eligible after certification has been granted. Certification is subject to revocation if it is determined that a business does not qualify as the county SLBE under the terms of this program. Certification reviews may be conducted for any business for which the county determines a certification review is warranted.
 - b. Businesses subject to certification reviews must provide the county with any information requested to verify the certification eligibility of the business.
- (g) *Small local business enterprise directory.* The CCD will create an SLBE directory that lists SLBEs categorized by types of firms to facilitate identifying businesses with capabilities relevant to a particular specification. Each business listing will contain the business name, contact person, address, phone number, legal structure of the business, and details concerning the company's business specialties. National Institute of Governmental Purchasing (NIGP) Codes will be identified for each company. The directory will be continuously updated and maintained on the computer and on hard copy. In compiling this directory, the CCD will identify and certify as many SLBEs as possible that have the potential of doing business with the county. The county will maintain and have available an updated SLBE directory and source list(s) for each bid/proposal solicitation to facilitate identifying SLBEs with capabilities relevant to general contracting requirements and to particular solicitations. CCD will make the directory and source list(s) available to bidders and proposers in their efforts to meet the SLBE requirements.
- (h) Procedures to ensure that SLBEs have an equitable opportunity to compete for contracts and subcontracts.
- (1) *Procedures to ensure opportunities.* Specific affirmative procedures to be utilized by the contract compliance division to ensure maximum practicable opportunities for SLBE participation include the following:
- a. Assist SLBE in obtaining insurance and surety bonds where necessary in the performance of contracts, including but not limited to:
 1. Packaging contracts so that dollar amounts do not require bonding;

2. Encouraging prime contractors to waive bonding or assist SLBE subcontractors in obtaining bonding;
 3. Encouraging staged bonding where feasible, when bonding is carried over from one project stage to the next; and
 4. Relaxing bonding requirements for projects less than \$25,000.00;
- b. Encourage the formation of joint ventures among SLBEs and between SLBEs. The county's contract compliance staff will assist prime contractors in identifying interested SLBEs for subcontracts;
 - c. Provide information on the county's organization and contractual needs and offer instructions on bid specifications, procurement policy, procedures, and general bidding requirements;
 - d. Provide specifications and requests for proposals to the SLBE community in a timely manner to allow SLBEs adequate time to develop responsible and responsive bids, quotations, and proposals. In instances where the cost of obtaining specifications or requests for proposal is prohibitive, copies of the material will be made available at no charge to SLBE development agencies. CCD will allow a reasonable amount of time for completion of bids and proposals. Except in the case of emergency needs, the minimum time allowed for completion of bids will be 15 days;
 - e. Establish prorated payment and delivery schedules where feasible, to minimize cash flow problems faced by small firms. The county will provide guidance to SLBE contractors regarding maintenance of positive flow in order that current obligations can be met;
 - f. Use the least complicated bid forms appropriate for each procurement solicitations
 - g. Hold pre bid conferences to explain SLBE requirements as well as forms that must be submitted with a bid or proposal;
 - h. Permit bidders/proposers to review and evaluate successful bid documents of similar procurements and use debriefing sessions to explain why certain bids were unsuccessful;
 - i. Provide projected procurement information and contracting schedules through the office of contract compliance and other outreach efforts;
 - j. Conduct internal information workshops to inform and acquaint the county staff with the goals and objectives of the county's SLBE plan, and to sensitize them to the problems of SLBE's;
 - k. Maintain records showing specific efforts to identify and award contracts to SLBE's and establish a monitoring system to ensure that all contractors, subcontractors, consultants, and vendors comply with contract specifications related to SLBE enterprise utilization;
 - l. Develop a written handbook containing the following:
 1. Procedures outlining specific steps on how to bid;
 2. Prerequisites for bidding on contracts;
 3. Information on how plans and specifications can be obtained;
 4. Names of persons to contact concerning questions on bid documents;
 5. Names of CCD staff and office hours;
 6. Types of supplies and services purchased; and
 7. Explanations of standard contract implementation procedures and requirements, concerning such matters as timely performance of work, contract changes, and payment schedules.
 - m. Inform SLBEs of bid notices and specifications related to their capabilities by placing bid notices in major local newspapers, and other periodicals. Bid notices will also be sent to local trade associations, technical assistance agencies, economic development groups, and SLBEs with capabilities relevant to the bid notice as identified by the county's SLBE data bank. Bid specifications will be made available to SLBE contractor associations and technical assistance agencies. Lists of potential firms bidding as primes are also available to SLBEs; and
- (2) *Direct assistance to SLBEs.* The CCD will assist SLBEs in overcoming barriers to program participation. This assistance will be offered directly by the county, as well as by referral to other assistance agencies through established, comprehensive, and continuous programs. Businesses requiring management and technical assistance will be identified through a questionnaire, personal experience with these businesses, and requests for assistance.

The CCD will offer the following assistance directly to SLBEs:

- a. The CCD will provide information on the county's contractual requirements and projected procurement opportunities.
 - b. The CCD will provide counseling and training sessions for SLBEs. County staff will be available to interested business representatives to explain (in detail) instructions for preparation of bid specifications, the county's procurement policies, procedures and general bid requirements. The CCD will coordinate and follow up all requests for assistance to insure that all necessary information was provided.
 - c. The CCD will provide coordination and referral to existing business development organizations.
 - d. Upon request, SLBEs will be provided with information on specific reasons for unsuccessful bids through debriefing sessions. The CCD will review individual solicitations to ensure that insurance and bonding provisions are not excessive. Assistance in obtaining insurance and bonding will be provided to SLBEs.
 - e. The CCD will provide intensive workshops and training sessions on identified SLBE problem areas, i.e., pricing and estimating, joint venture formation, accounting principles, marketing, etc.
 - f. Information on the county's SLBE program will be disseminated through written materials, seminars, workshops, and specialized assistance to individual firms.
- (i) *Methods by which the county will require contractors and subcontractors to comply with applicable SLBE requirements.* The CCD staff is available to assist contractors and subcontractors in implementing this program. As a standard procedure, such assistance includes:
- (1) Clear identification of the county's SLBE provisions in all the county solicitations;
 - (2) Pre-proposal/bid conference to explain the county's SLBE program;
 - (3) Identification of certified SLBEs per the county's solicitation including a list of certified SLBE available to all document holders;
 - (4) Lists of document holders made available to interested SLBEs, as well as CCD staff available to assist bidders/proposers in developing their SLBE programs;
 - (5) County staff's monitoring SLBE participation levels on projects throughout the duration of a contract. Contractors violating contract provisions regarding SLBE participation are subject to sanctions, including contract termination.
- (j) *Means to ensure that competitors make good faith efforts to meet SLBE contract goals.*
- (1) For all contracts for which contract goals have been established, the county shall in the solicitation inform competitors that the competitors will be required to submit SLBE participation information to the county and that the award of the contract will be conditioned upon satisfaction of the requirements established by the county. The apparent successful competitor shall submit, at the time of the bid opening or proposal review, the following information:
 - a. The name and address of SLBE firms that will participate in the contract;
 - b. The description of the work each named SLBE will perform; and
 - c. The dollar amount of participation by each named SLBE firm.
 - (2) If the SLBE participation submitted by the competitor does not meet the SLBE contract goals, the competitor must submit evidence demonstrating that "good faith efforts" were made to meet the goals. To determine sufficient "good faith efforts" to meet the SLBE contract goal, a bidder/proposer shall document the steps it has taken to obtain SLBE participation, including but not limited to the following:
 - a. Attendance at a pre-bid meeting, if any, scheduled by the county to inform SLBEs of subcontracting opportunities under a given solicitation;
 - b. Advertisement in general circulation media, trade association publications, and other media for at least 15 days before bids or proposals are due;
 - c. Written notification to SLBEs that their interest in the contract is solicited;
 - d. Efforts made to select portions of the work proposed to be performed by SLBEs in order to increase the likelihood of achieving the stated goal;
 - e. Good faith efforts to negotiate with SLBEs for specific sub bids, including, at a minimum:
 - 1. The names, addresses, and telephone numbers of SLBEs that were contacted;
 - 2. A description of the information provided to SLBEs regarding the plans and specifications for portions of the work to be performed; and

3. A statement of why additional agreements with SLBEs were not reached.
 4. Concerning each SLBE, the competitor contacted but rejected as unqualified, the reasons for the competitor's conclusion; and
 5. Efforts made to assist the SLBEs contacted that needed assistance in obtaining bonding or insurance required by the competitor or the county.
- (3) To determine whether a competitor that has failed to meet SLBE goals may be awarded the contract, the county will determine whether the efforts the bidder/proposer made to obtain SLBE participation were "good faith efforts." Efforts that are merely pro forma are not "good faith efforts" to meet the goals. In order to award a contract to a bidder/proposer that has failed to meet SLBE contract goals, the county will determine whether the bidder/proposer actively and aggressively made efforts to meet the county's SLBE goals. Competitors that fail to meet SLBE goals and fail to demonstrate "good faith efforts" shall not be eligible to be awarded the contract.
- (4) To ensure that all obligations under contracts awarded to SLBEs are met, the County shall review the contractor's SLBE involvement efforts during the performance of the contract. The contractor shall bring to the attention of the county any situation in which regularly scheduled progress payments are not made to SLBE subcontractors.
- (k) *Outreach to SLBEs.* Information dissemination and communication with SLBEs is an integral part of the county's SLBE program. As a part of its outreach program, the CCD will solicit input from representatives of SLBEs, trade associations and community organizations. This input will serve several important functions, including:
- (1) Providing information to identify additional SLBE firms;
 - (2) Assisting in refining SLBE Program goals and procedures; and
 - (3) Providing an independent assessment of the effectiveness of the county's SLBE program.
- (l) *Procedures to require that participating SLBEs are identified by name by competitors for contracts.* The CCD shall indicate, in solicitations for contracts that provide opportunities for SLBE participation, goals for the use of SLBE firms. Solicitations shall require all bidders/proposers to submit a written assurance of meeting the goals in their bids or proposals. Bids must also include a proposed schedule of SLBE participation that lists the names of SLBE subcontractors, a description of the work each is to perform, and the dollar value of each proposed SLBE subcontract. If the SLBE participation does not meet the SLBE contract goals, the bidders/proposers must submit sufficient information and evidence demonstrating that the bidder/proposer made "good faith efforts" to meet the goals. Bidders/proposers are required to submit this information prior to the issuance of the notice to proceed and bidders and proposers are so informed at the time of solicitation. Agreements between a bidder/proposer and a SLBE in which the SLBE promises not to provide subcontracting quotations to other bidders/proposers shall be prohibited.
- (m) *Maintenance of records and reports.*
- (1) *Records.*
 - a. The CCD will maintain an electronic monitoring and reporting system which tracks the progress of the county's SLBE program. At a minimum, this electronic record keeping system will identify and assess SLBE contract awards, prime contractors' progress in achieving SLBE subcontract goals, and other efforts to assist SLBEs. Specifically, the CCD will maintain records showing:
 1. Procedures that have been adopted to comply with the county's requirements;
 2. Awards to SLBEs, including names of contractors and subcontractors, nature of the work/services to be performed, and the percentage of SLBE participation per contract. To assist in this effort, the CCD will obtain regular reports from prime contractors on their progress in meeting contractual SLBE obligations and specific efforts to identify and award contracts to SLBEs.
 - (2) *Reports.*
 - a. The CCD shall compile data and prepare reports including, but not limited to the following:
 1. The copies of direct mailings to SLBEs;
 2. Pre-bid conference information as it relates to the county's SLBE provisions;
 3. Requests for assistance from SLBEs interested in bidding/proposing on the county's contracts and subcontracts;
 4. Workshops, seminars and training programs conducted for SLBEs; and
 5. Efforts to assist SLBEs in acquiring bonding and insurance.

- b. The CCD will submit, at least, annual SLBE reports to the Director of Central Services. These reports shall include at a minimum:
 1. The number of contracts awarded to SLBEs;
 2. A description of the general categories of contracts awarded to SLBEs;
 3. The dollar value of contracts awarded to SLBEs;
 4. The percentage of the dollar value of all contracts awarded to SLBE during the preceding quarter; and an indication of whether the percentage met or exceeded the SLBE goals specified per contract.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-150. - Procurement non-discrimination program.

- (a) *MWBE certification.* Certification is the qualifying process that ensures that a particular business is a MWBE that performs a commercially useful function. Certification assures that interested MWBEs have the proper ownership, control, and management as defined in the program. Current contact information about the certifying entity shall be maintained by the CCD and provided to interested persons upon request.
- (b) *Reciprocal certification.* Subject to the approval of the director of the central services, the county may accept certification of a MWBE from another government or private entity having certification standards at least as stringent as those created in this chapter.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-151. - Benchmarks.

- (a) *Definition and purpose.* The county has a compelling interest in providing equal business opportunities for all persons wishing to do business with it. Therefore, the county will monitor and track MWBE availability and participation in the procurement process through benchmarks. Benchmarks are not quotas, but a method enabling the county to compare the participation of MWBEs in the procurement process with expected participation rates based on the availability of MWBEs within the MSA.
- (b) *Procedure for establishing benchmarks.* The CCD shall establish and recommend proposed benchmarks to the Director of Central Services semiannually. The CCD shall evaluate the levels of MWBE participation for the county government's overall procurement program. As part of the review, the CCD may consider data regarding MWBE participation for the preceding three fiscal years for a more accurate portrayal of MWBE participation. The CCD shall review available MWBE totals and percentages for the MSA that shall be reported in ranges showing expected MWBE participation rates on county government projects for each procurement sector based on MWBE availability within the MSA. MWBE availability shall be determined in accordance with current legal, economic, statistical and social science standards. The contract compliance manager shall consult with the contracts administrator in developing the benchmarks. The contract compliance manager may employ one or more qualified consultants each year to assist the CCD in determining MWBE availability. Benchmarks during the first year of the program shall be based on data compiled in the county disparity study, a copy of which shall be placed on file in the office of the Director of Central Services.
- (c) *Comment period.* The CCD shall publish proposed benchmarks in a newspaper of general circulation at least once each week for four consecutive weeks and shall receive public comments submitted within ten days after the final such publication. The CCD shall consider all public comments duly submitted, additional recommendations of the CCD, make any necessary changes to the benchmarks, and submit the proposed benchmarks to the central services director. The CCD shall make any revisions the county commission feels are necessary and shall then issue the final benchmarks, a copy of which shall be filed with the county clerk.
- (d) *Review of benchmarks.* The benchmarks shall be in effect for a period of one year. The CCD shall review benchmarks semiannually and shall report its findings to the county commission. All total contract dollars awarded to MWBEs shall count towards benchmark percentages.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-152. - Bid requirements.

No bid submitted to the county for work within the scope of the program shall be considered responsive unless it includes each of the following documents:

- (a) *Covenant of non-discrimination.* Each bidder must submit a duly executed and notarized covenant of non-discrimination. This written instrument shall contain promises, averments and/or affirmations made by the bidder:
 - (1) To adopt the policies of the county relating to equal opportunity in contracting on projects and contracts funded, in whole or in part, with funds of the county government;
 - (2) Not to otherwise engage in discriminatory conduct;
 - (3) To provide a discrimination-free working environment;
 - (4) That this covenant of non-discrimination shall be continuing in nature and shall remain in full force and effect without interruption;
 - (5) That the covenant of non-discrimination shall be incorporated by reference into any contract or portion thereof which the bidder may hereafter obtain; and
 - (6) That the failure of the participant to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract.
- (b) *Statement of successful subcontractors.* Each bidder shall submit a statement of successful subcontractors. The statement shall include each successful subcontractor's name, NIGP Code, race, gender, national origin, business location, work to be performed, dollar value of the project, and percentage attributable to each subcontractor. In addition, copies of each successful subcontractor's price quotes must be submitted by the close of business on the second business day following submission of a bid.
- (c) *Statement of interested subcontractors/vendors.* Each bidder shall submit a statement of interested subcontractors/vendors that shall include each individual or entity requesting information about the project or solicited for participation on the project. The list of subcontractors shall include those persons who did not actually submit a price quotation or a bid, rather just requested information. The statement shall include the individual's or entity's name, NIGP Code, race, gender, national origin, business location, and information requested.
- (d) *Statement of bid proposals/price quotations.* Each bidder shall submit a statement of bid proposals/price quotations. The statement shall include each potential subcontractor's vendor's name, NIGP Code, race, gender, national origin, business location, work requested to be performed, and price quotation and/or bid. The statement shall include only those potential subcontractors not selected that actually submitted a bid or proposal for the project.
- (e) *Letter of intent to perform as a subcontractor/joint venture.* In the event that a bidder or participant proposes to use subcontractors or joint ventures if awarded a contract with the county, such bidder shall be required to submit to the CCD a letter of intent signed by both the subcontractor/joint venturer and bidder. This form is to be completed and submitted by the apparent successful bidder by the end of the second business day following issuance by the contracts administrator of a notice of award of contract.
- (f) *Other information and data.* The CCD may request additional information and data prior to a contract award. This information may include, without limitation, information regarding business ownership of all subcontractors to be utilized on the project, all of which shall reflect the race, gender, ethnic origins, location, and structure of the identified businesses, in order to be eligible for contract award. The CCD with the approval of the contracts administrator may declare any bid non-responsive upon failure or refusal of the bidder to provide information and data required by this program and requested by the county pursuant to this paragraph.
- (g) *Reporting subcontractor substitution or replacement.* The prime contractor shall report any replacements or substitutions of the use of subcontractors to the CCD in advance of making the substitution. For reporting purposes, the prime contractor shall report to the CCD statistical data pertaining to the new subcontractor, including race, gender, national origin, and business location.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-152.1. - Evaluation of bid for program compliance.

- (a) If the bid submitted by the first ranked bidder in response to a solicitation issued by the contracts administrator includes the documents required by section 2-152 of this division, the contracts administrator shall forward the bid to the CCD. The CCD shall then evaluate whether the first ranked bidder has engaged in and adequately

documented with its bid efforts to ensure that its process of soliciting, evaluating, and awarding subcontracts, placing orders, and partnering with other companies has met the criteria of the program including the use of good faith efforts. Upon a recommendation of compliance by the first ranked bidder, the CCD shall notify the contracts administrator. The contracts administrator shall proceed to award a contract upon concurrence with the CCD recommendation.

- (b) If the CCD's preliminary analysis suggests that the first ranked bidder has failed to comply with the good faith or other requirements of the program, the CCD shall send written notice to the bidder. The notice shall set forth with particularity the reasons for the questioning of non-compliance and shall schedule a conference at which the issue may be reviewed with the bidder. The bidder shall be permitted to present any additional materials relevant to the question of non-compliance for consideration by the CCD. If, after the conference and upon consideration of all relevant materials, the CCD is convinced that the bidder is in fact compliant with the requirements of this chapter, the CCD shall notify the contract administrator, who shall proceed with an award of contract upon concurrence with the CCD recommendation. If the CCD concludes that the bidder is not compliant with the requirements of this chapter, the CCD shall so notify the contract administrator, who shall, upon concurrence with the conclusion, reject that bidder's bid, identify another bidder as the first ranked bidder, and forward that bidder's bid to the CCD. The CCD shall then proceed to evaluate the bid submitted by the new first ranked bidder. The contract compliance manager shall decide whether a determination of non-responsiveness shall be made pursuant to section 2-152.2 of this division. Decisions of the Contract compliance manager under this section are subject to protest by filing a written protest letter with the Director of Central Services within seven days. The Director of Central Services will issue the final determination of the county within 14 days of receipt of the protest.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-152.2. - Sanctions and penalties for non-compliance.

The CCD shall recommend appropriate mechanisms to enforce the provisions of this program to the contract administrator. Further, the failure of a bidder or participant to comply with the requirements of this chapter may be grounds for suspension or debarment by the contracts administrator pursuant to the standards set forth in this chapter. Sanctions shall not be imposed unless there is evidence of specific conduct on the part of participant that is inconsistent with or in direct contravention of the applicable provisions of this program. In determining appropriate sanctions, the contracts administrator shall consider the following factors:

- (1) Whether the failure to comply with applicable requirements involved intentional conduct or, alternatively, may be reasonably concluded to have resulted from a misunderstanding on the part of the participant of the duties imposed on them by this program;
- (2) The number of specific incidences of failure by the participant to comply;
- (3) Whether the participant has been previously suspended;
- (4) Whether the participant has failed or refused to provide the CCD with any information required or requested by this program;
- (5) Whether the participant has materially misrepresented any applicable facts in any filing or communication to the CCD; and
- (6) Whether the participant has subsequently restructured or taken other action to cure the deficiencies in meeting applicable requirements.

(Ord. No. 2017-45, § 1, 6-6-17) Sec. 2-153. - Outreach program.

To ensure that opportunities to participate in the county contracts are available to the widest feasible universe of willing, available and qualified businesses, the CCD shall develop and engage in outreach designed to increase public awareness of the program. This outreach may consist of any of the following:

- (a) *Public awareness of the program.* To increase the effectiveness of the CCD and to increase the awareness of the program, the CCD shall disseminate at community events, trade shows, and other appropriate business functions, and publish at regular intervals information describing the program. This information shall also identify ongoing contracting opportunities.
- (b) *Outreach.* The CCD shall assist SLBEs in obtaining certification by disseminating information, providing individualized counseling, and/or conducting seminars regarding the certification process.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-153.1. - Mentor-protege initiative.

The CCD shall encourage all contractors and subcontractors to participate in a mentor/protege initiative on a voluntary basis for the purpose of enhancing the potential of all SLBEs by building business capability to expand contracting opportunities within an agreed framework of conditions. The initiative is intended to assist in integration of on-the-job training for all SLBEs and permit a prime contractor to offer assistance on a limited term agreement, generally one project. Any interested contractor or subcontractor may submit with a bid a completed mentor/protege promise demonstrating that such a relationship has been formed. The CCD shall make available a database of potential mentor and protege firms. No contractor or vendor shall be penalized or preferred based upon participation or non-participation in this initiative. All administrative functions should be performed by the protege personnel. The protege is expected to maintain final decision-making responsibilities regarding the scope of its work.

(Ord. No. 2017-45, § 1, 6-6-17) Sec. 2-153.2. - Severability.

If any of the provisions set forth in this division, or any section, subsection, paragraph, sentence, clause, phrase, or word thereof, shall be found to be invalid, illegal or unenforceable for any reason, the application of the remainder of this division shall not be affected by such invalidity.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-154. - Application.

This division shall not apply to any contract entered into by the county government or any solicitation issued prior to the effective date of the adopting ordinance of this division.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 9. - DISPOSITION OF PROPERTY

Sec. 2-155. - Sale of real property.

- (a) *Public sale required.* It is the policy of the Board of Commissioners that county-owned real property shall be identified for sale, transfer, or other disposition in accordance with Georgia law. Also, unless otherwise provided by law, the sale or disposition of all interests in county-owned real property shall be to the highest responsible bidder by competitive sealed bidding, pursuant to O.C.G.A. § 36-9-3, as amended. The abandonment, substitution, disposal or leasing of county-owned real property no longer needed for public road purposes shall be in accordance with the provisions of O.C.G.A. § 32-7-1 et seq.
- (b) *Exceptions to public sale.* The following transactions shall not be governed by subsection (a):
 - (1) A redemption of real property acquired by County under tax deed;
 - (2) A grant of easement or license;
 - (3) A grant or conveyance of right-of-way or for other transportation purchases.
 - (4) A conveyance to any other unit of government;
 - (5) A conveyance of recreational set-aside property to a homeowner's association in the manner permitted by state law; or
 - (6) A lease that constitutes a usufruct under state law.
- (c) *Procedures.* Except as otherwise specifically provided by state law, the County shall not dispose of any real property unless the Board of Commissioners has declared such real property to be unserviceable. Other than dispositions governed by subsection (a) or by specified provisions of state law, any disposition may be made at public or private sale, upon such terms as the Board of Commissioners shall deem to be in the County's best interest.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-156. - Disposition of personal property.

- (a) *Declaration of unserviceability.* The Director shall effectuate the sale of personal property owned by the county under the supervision of the Board of Commissioners when it is determined and certified by the Director and the

head of the user department in charge of the property that the property has depreciated to the point of useless life or to the extent that it is advisable to dispose of said personal property and is therefore unserviceable. The Director shall determine whether a particular item or category of personal property can no longer be used advantageously by the County and has therefore become unserviceable after conferring with the head of the user department desiring to sell the property. The Board of Commissioners may establish criteria establishing unserviceability for categories of personal property which may become unserviceable on a regular, frequently recurring basis, and may delegate to the Director the determination of whether a particular commodity meets the criteria of unserviceability for its category.

- (b) *Disposition.* No sales of unserviceable county personal property shall be made by the Director under this section where other provisions of law provide for such sales, but this section shall apply to the sale of unserviceable county personal property where no other provision of law is made. Unserviceable personal property may be sold by public sale, sealed bidding, spot bidding or any other means deemed most advantageous to the County under the particular circumstances as determined by the Director. A sale to a private person shall be for the highest net purchase price reasonably obtainable by the County. A sale to another unit of government shall be for a fair and reasonable purchase price that need not be as high as the purchase price obtainable from a private person. All sales for personal property items where the original unit purchase cost is \$25,000.00 or less shall be approved by the Director. The Board of Commissioners shall approve sales for personal property where original unit cost exceeds \$25,000.00. The Director shall remit the proceeds from the sale to the Chief Financial Officer for deposit into the general fund.

(Ord. No. 2017-45, § 1, 6-6-17)

DIVISION 10. - ELECTRONIC COMMERCE

Sec. 2-157. - Electronic transmissions of information.

Electronic commerce shall include but not limited to on-line supplier registration, acceptance of bids and proposals by electronic mail, electronic or virtual purchasing malls and catalogs, internet auctions and reverse auctions, notifications of solicitations and download capability and acceptance of electronic (digital) signatures.

Notwithstanding any other provisions, this chapter applies to records generated, stored, processed, communicated, or used for any purpose by Clayton County for purchasing, acquisition, services, or disposition of personal property. This shall apply to all Clayton County contracts.

The Chief Operating Officer or his/her designee is authorized to promulgate procedures to coordinate, create, implement, and facilitate the use of common approaches and technical infrastructure, as appropriate, to enhance the utilization of electronic commerce, electronic records, electronic signatures, and electronic security procedures by and for Clayton County for these purposes.

The Chief Operating Officer shall be authorized to develop, implement, and facilitate procedures for the use of electronic records, electronic signatures, and security procedures for all other purposes and is authorized to promulgate methods, means, and standards for secure electronic procurement transactions.

(Ord. No. 2017-45, § 1, 6-6-17)

Sec. 2-158. - Electronic signatures and records.

An electronic record satisfies any rule requiring a document to be in writing. An electronic signature satisfies any rule of law requiring a signature. Any electronic record is signed as a matter of law if it contains a secure electronic signature.

An electronic signature is deemed to be secure if it is created by application of a security procedure that is commercially reasonable and provided the electronic signature can be verified. Further, it is considered secure if it can be linked to the electronic record to which it relates in a manner such that, if the record is changed, the electronic signature is invalidated.

An electronic record is deemed to be secure if it is created by application of a security procedure that is commercially reasonable and agreed to by Clayton County. The electronic record will be deemed secure when it can be verified not to have been altered since a specified point in time.

(Ord. No. 2017-45, § 1, 6-6-17) Sec. 2-159. - Reserved.